



- Ron Bernasconi submitted a letter to Council (filed). He believed it was important that the process for seeking an additional opinion be open, unbiased, and incorporate suggestions from the public. In addition, it should require written disclosures of conflicts of interest or relationships with any of the parties that have a stake in the litigation, as well as their qualifications in environmental law and public finance. He suggested that a steering committee be formed consisting of Mayor Hitchcock, Council Member Hansen, and Judge Baysinger or Seibly to select three or four firms to interview. Candidates should be provided with the following information to review in advance of the interview:
  - The complaint;
  - All counterclaims and cross claims;
  - The 9<sup>th</sup> Circuit Fireman's Fund decision;
  - The four financing agreements;
  - Professional services contract with Envision Law;
  - The Public Financial Management (PFM) report;
  - The Cooperative Agreement;
  - All of Judge Damrell's written decisions;
  - The July 11, 2003 and September 19, 2003, transcripts of the hearings before Judge Damrell;
  - The 3<sup>rd</sup> Amended Scheduling Order; and
  - All relevant City Council minutes including August 6, 2003, and the transmittal to the City Council from Ron Bernasconi for Citizens for Open, Honest and Effective Government dated August 4, 2003 (filed).

Mr. Bernasconi recommended that the additional opinion also give the Council guidance as to the propriety of the conduct of the City Attorney and outside counsel's handling of the case, e.g. not forwarding offers of settlement, notices of hearings, and copies of rulings to the City Council. In addition, the opinion should determine whether the City has recourse for malpractice against outside counsel or others acting as deputy city attorney because they have been given some type of qualified immunity.

Referencing Mr. Bernasconi's letter, Mayor Pro Tempore Howard asked how he came to the conclusion "that the Council appears ready to approve the selection of a law firm to provide a second legal opinion."

Mr. Bernasconi explained that he drew the conclusion from comments made by Council Members Beckman and Hansen and Mayor Hitchcock during meetings and in newspaper articles.

Mayor Pro Tempore Howard expressed concern that information and opinions were being discussed in the newspaper before Council had an opportunity to address them at its regular meetings. She asked Mr. Bernasconi if he had ever stated he would petition for a recall if Council did not consider removing the City Attorney.

Mr. Bernasconi replied that Council had adequate grounds for at least a reevaluation of the City Attorney. He expressed his opinion that recalls are generally a waste of taxpayers' money and added that he believed the next election would solve problems in terms of those who have not shown a willingness to keep a critical eye on the City Attorney.

In response to Council Member Hansen, City Attorney Hays stated that typically when another legal opinion is sought on an issue it is done at the outset, not long after the process has begun. He recalled that the financing was taken to San Joaquin Superior Court and Judge Cruikshank provided an opinion on its validity, which he believed constituted a second opinion.

Council Member Hansen noted that it had been stated that the financing would triple what it is now and then triple again in a certain period of time. He asked Mr. Hays if that were true and if there are safeguards for the City to prevent that from happening. Mr. Hays indicated that he would have to review the document before providing an answer.

In response to questions posed by Council Member Hansen, Mr. Hays stated that Lehman Brothers can look only to recoveries that are made in the litigation. The financing document clearly states that there are no City revenues at risk. He reported that it took Lehman Brothers nearly two years to arrive at the conclusion that it would be able to finance the program and look only to program receipts for payment and he believed that this constituted a second opinion. Mr. Hays stated that he first met attorney Michael Donovan on July 2, 1996, at a meeting that the City Manager had arranged. Mr. Hays reported that he was hired by the City of Lodi in October 1995. His first record of having any involvement in this case was on January 17, 1996, when he spoke with Mike Brady who was outside counsel for the City dealing with the PCE/TCE contamination issue. Originally the City had two choices: 1) either have a program where it would pay out of its water fund to clean up the contamination, or 2) the current environmental abatement program. When the options were presented to Council, Mr. Donovan provided information about environmental procedures and insurance law, and Mr. Hays spoke about utilizing the nuisance provisions of California law. In reference to settlement offers, Mr. Hays explained that parameters were established and he had received direction that Council did not want to see offers that did not meet those parameters. The offers had to have several components to them, including that it had to be in a dollar amount that represented the particular Potentially Responsible Party's judged level of fault in the matter, and it had to address a recovery of the City's response costs. Mr. Hays could not remember any "solid offers" that met those parameters. The only insurance settlement accomplished was with Wausau Insurance, which dealt with one of the many entities involved at the Holtz Rubber Company site, and the defunct corporation called Rantron.

Council Member Hansen clarified that he would like another opinion about the financial agreement and whether or not it was as "iron clad" as it had been presented in terms of protection for the City. In addition, he would like consideration given to the two original strategies considered by Council and a determination made of whether the City is on the right track.

Council Member Beckman recommended that a professional opinion be obtained on the financial ramifications of the following scenarios:

- What would happen if the City settled the case now;
- What would happen if the City were to settle with some of the defendants and not others;
- What would happen if the City went all the way and won; and
- What would happen if the City went all the way and lost.

Council Member Beckman stated that he would like clarification on whether the City has liability, whether it wins or loses the case.

Mr. Hays pointed out that no opinion has yet been rendered on those questions, even by the City's current legal staff, to which Council Member Beckman replied that he would like a response from them.

Council Member Hansen clarified that he would like the firm that provides the additional opinion to determine whether there were more than two strategies originally available to Council and to evaluate the current strategy in terms of case law and decisions that have been made.



Mayor Pro Tempore Howard favored having more frequent closed sessions on this topic to allow Council an opportunity to ask these types of questions and receive answers from legal staff. Ms. Howard had found that each time she had an opportunity to receive information and status reports from staff, it broadened her understanding, and made her more confident that the City was headed in the right direction. She cautioned that timing was important at this juncture because the trial is scheduled for December and two items are in the appeal stage at the 9<sup>th</sup> Circuit Court. The outcome of the appeals will direct the future of the case, and she preferred that more information be gathered by Council prior to making a decision to pursue another opinion.

Mayor Hitchcock expressed concern that the settlement strategy is impacted by the financing agreement, and differing interpretations have been rendered by Mr. Hays and Mr. Donovan about this. In reference to Mr. Hansen's inquiry about the tripling of the financing amount, Ms. Hitchcock explained that it is called the "rule of 72," which means that any debt is going to double every four years if the interest rate is 25%. She was opposed to Ms. Howard's suggestion of waiting for the appeal decisions and pointed out that if the City lost them, it would appeal those decisions, and during this time financing costs would continue to grow. Ms. Hitchcock recalled Mr. Hays saying that the City could get out of the current arrangement at any time; however, she did not believe it was an accurate statement.

In reply to Mayor Hitchcock, Mr. Flynn pointed out that there are three appointees who work for the City Council. He is responsible for most of the administrative functions, while Mr. Hays provides Council with legal advice. Most of the direction involved in this case has gone from the City Council to the City Attorney. He recalled that Mr. Donovan came to him with a proposal, which he referred to the City Attorney, and Mr. Hays brought the case to the City Council. Mr. Flynn stated that he made it very clear when the financing issue came up, that in no case, would he agree to it if any City funds were put in jeopardy. He was assured by the attorneys that that was the case, and has an agreement that states that the City is not liable for the costs. Mr. Flynn acknowledged that the City's financial advisor, Alex Burnett, reviewed the financing agreement and provided opinions and cautionary statements, which raised some questions. He commented that once a major investment is made it is very hard to walk away from it and recognize that a mistake was made. In reference to obtaining another opinion, Mr. Flynn stated that if it would reassure the public and Council, he would recommend and support it.

Council Member Beckman spoke in opposition to getting an evaluation of the City's current strategy, as the value of it would be questionable. He was, however, in favor of obtaining information on other possibilities and choices that are available. He preferred that the focus be on the financial situation and other options. Mr. Beckman noted that before he could entertain the idea of leaving the current strategy, he needed to know how much it would cost.

In response to Council Member Hansen, Mr. Hays drew an analogy to a baseball game and stated that if a person lives and dies by each inning they are not keeping their eye on the end game. He stated that whatever firm is selected to provide another opinion needs to understand the "end game" and advise Council on whether it has an opportunity to be reached. Mr. Hays reported that the financial agreement was looked at as a venture capital transaction because there was no collateral associated with the program other than program receipts. He recalled that in 1999-2000 the venture capital interest rate was in the 40% to 45% range. The financing transaction is not a fixed rate; it is London Interbank Offered Rate (LIBOR) plus 5%, which is in the 20% to 30% range. He explained that it was a taxable transaction from the standpoint of the investor.

filed 9-17-03

**RON & YOLANDA BERNASCONI**

Wednesday, September 17, 2003

Lodi City Council  
C/O Lodi City Clerk  
P.O. Box 3006  
Lodi, CA 95241-1910

Honorable Council Members:

Now that the Council appears ready to approve the selection of a law firm to provide a second legal opinion, it is important that the selection process be open, unbiased and incorporate suggestions from the public who ultimately pay the water bills and taxes.

Such a process should require written disclosures of conflicts or relationships with any of the parties that have a stake in the litigation as well as their qualifications in environmental law and public finance.

To expedite the process and avoid violations of the Brown Act, a Steering Committee could be formed with the two Council members who first acknowledged the need for a second opinion (Hitchcock and Hansen), which would be headed by Judge Baysinger or Judge Seibly.

A small Steering Committee could more quickly review the required disclosures and resumes and then select three or four of the best candidates to be interviewed by the Steering Committee.

The Candidates should be provided a package of material to review in advance of the interviews, which includes:

1. The complaint,
2. All counterclaims and cross claims
3. The Ninth Circuit Fireman's Fund Decision
4. The financing agreements (there are 4 that make up the financing)
5. The professional services contract with Envision
6. The PFM report and the summary prepared by staff for the Council when the financing was adopted
7. The Cooperative Agreement
8. All of Judge Damrell's written decisions
9. The July 11, 2003 and September 19, 2003 transcripts of the hearings before Damrell
10. The 3rd Amended Scheduling Order
11. All relevant City Council minutes, including those from the August 6 censure meeting with a copy of my August 6, 2003 Transmittal to the Council, which I hereby submit to the City Clerk to be part of the record.

Then, the Steering Committee could interview and winnow down the candidates to make a recommendation, which would be approved by the entire Council.

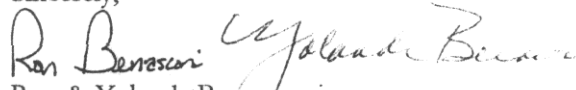
The second legal opinion should also review the litigation to date and make recommendations on how to proceed forward, giving consideration as to how the Lehman financing and arrangements with Envision may impact the City financially.

Since last months attempt to censure the Mayor raised many questions regarding our attorneys' handling of this case, the second opinion should also address the propriety of our Attorneys' failure to provide the Council with a settlement offer, ruling and notice of hearing.

Finally, the opinion should consider whether the status of Envision's Attorneys as assistant city attorneys precludes the City from prosecuting malpractice claims against their errors and omissions insurance to recapture the millions in interest expense, which our attorneys told us we could recover.

Thank you for your consideration.

Sincerely,

  
Ron & Yolanda Bernasconi  
3019 Oak Knoll Way  
Lodi, California 95242

TRANSMITTAL TO THE LODI CITY COUNCIL

filed 9-17-03  
R. Bernasconi

TO: LODI CITY COUNCIL  
FROM: RON BERNASCONI FOR CITIZENS FOR OPEN, HONEST AND EFFECTIVE GOVERNMENT  
SUBJECT: CENSURE OF MAYOR HITCHCOCK & LODI'S PCE / TCE LITIGATION STRATEGY AND FINANCING  
DATE: 8/4/2003

**Honorable Lodi City Council Members:**

In an effort to provide sufficient background to enable our newer Council members make a well-informed policy decision relative to the proposed Censure of Mayor Hitchcock and enable the Council to proceed more efficiently and effectively in its litigation to cleanup Lodi's ground water we have compiled and extracted the attached documentation.

**September 26, 1999 (TAB 1) "Lodi Battling Insurers Over Pollution Cleanup"** the Sacramento Bee reported,

"Lodi is not unlike many other California communities that have had their drinking water threatened by these subterranean plumes of PCE and TCE - "probable" cancer-causing chemicals in the view of public health officials. **But no other community has gone as far as Lodi in trying to keep the city, its residents and the local businesses that generated the pollution from having to pay a dime toward the cleanup...**"

"This city is a very business-friendly town. It will do just about anything it can to accommodate them," said Randall Hays, the city attorney. And that is where high-priced Bay Area attorney Michael C. Donovan comes in. Lodi hired Donovan about three years ago at the top-tier rate of \$415 an hour.

**Since then, the city has invested nearly \$8 million in legal and consulting fees. It's all part of a novel strategy crafted largely by Donovan to go directly after insurance assets of the small businesses on the contaminated properties while leaving the owners financially unscathed.**

For its money, Lodi has secured one settlement - \$1 million from Employers Insurance of Wausau on behalf of a defunct Lodi manufacturer... But the city is not close to turning its first spade of solvent-saturated dirt in the cleanup; it has yet to produce a work plan acceptable to state environmental officials who oversee contaminated sites.

Lodi has successfully fought to become the first city in California to take charge of a major environmental restoration project, a job that has been the purview of state or federal environmental regulators. The city negotiated a deal with the state Department of Toxic Substances Control that gave it authority to devise its own strategy for cleanup and enforcement, subject to certain requirements and deadlines. The state also agreed not to go after the city for contamination that could be attributed to leaks in its sewer system.

**The City Council adopted an unusual, Donovan-crafted law [MERLO] giving itself broad authority to compel financial information from insurers and impose criminal sanctions and heavy fines for refusal to comply.** City officials up and down California are watching Lodi blaze the trail to see if it's one to follow.

Insurance companies so far have managed in court to keep Lodi's enforcement orders and subpoenas at bay. In the case before the federal appellate court, Fireman's Fund Insurance Co. and other insurers argue that the potent portions of the Lodi ordinance are pre-empted by the federal Superfund law, which establishes liability for environmental cleanups.

In the state courts, the 3rd District Court of Appeal recently ruled that Lodi could not assert its legislative powers under the California Constitution to subpoena policy information from insurers - in this case, Connecticut Indemnity Co. - as it would violate companies' privacy rights. Lodi is appealing the case to the state Supreme Court.

The city also is appealing a ruling by a Superior Court judge who not only quashed a similar effort to compel information from USF&G Corp. but ordered the city to pay the insurance holding company \$50,000 for its legal costs.

Donovan has 20 years' experience representing other states in environmental cleanups. **But that experience comes at prices seldom seen in accounts receivable at Lodi City Hall.** Two years and nine months after hiring Donovan, Lodi's expenditures for legal and technical help have mounted to more than \$5.3 million, with another \$2.4 million due.

**Donovan and Hays express no doubt that the city will more than recover all expenses incurred. The way the laws are designed, we can't lose," Hays said.**

Lehman Brothers, a global investment bank, apparently believes the city has a good shot at collecting big money. The company plans to give the city \$16 million to extend its legal battle while expecting to recover as much as \$20 million, including interest, from judgments or settlements against insurance companies. Donovan's firm would get 20 percent of the insurance money collected on top of the \$65,000 it charges monthly for its services.

**"When you get the backing of Wall Street, you have a case," Mayor Keith Land said.**

But some wonder whether the only cleaning up in Lodi will be by lawyers and consultants.

Skeptics include two newcomers to the Lodi City Council - Alan Nakanishi and Susan Hitchcock. They would like to have seen more money going sooner toward restoring the water supplies or at least containing the spread of the industrial solvents. But they believe it's too late to reverse the course set by incumbents in late 1996. "It's very difficult to stop the train from going forward," Nakanishi said.

December 21, 1999 (TAB 2) Public Financial Management issues its "final report to outline certain factors that the City of Lodi might want to consider in regard to the Environmental Public Nuisance Abatement Program," which stated, **"The City will need to reach its own conclusions in regard to the risks and the appropriateness of the strategy and Program from a financial, legal and policy perspective."**

Yet, Judge Damrell's June 27, 2003 ruling (TAB 3) was a stinging rebuke of the City's strategy from a policy perspective when it stated at Page 10,

**"Sound public policy runs counter to Lehman's claim of privilege. The business transaction between Lehman and Lodi to fund environmental litigation for profit could undermine the efficient and effective remediation because the investment bank does not seek to remediate, instead, it seeks to recover its investment and make an extraordinary profit. To the extent Lehman's financial arrangement with Lodi conflict with the goal of cleaning up environmental contamination, sound public policy counsels against encouraging such arrangements."**

The PFM Report Page 1 states, "It is our understanding that the City estimates that the proceedings will take approximately four years and will cost approximately \$15 million. In order to fund this effort the City is considering a non-recourse loan of approximately \$16 million.....**This loan will have a commitment fee of \$3,250,000 and will pay interest based on LIBOR plus 20%.**"

The PFM report on Page 2 states, **"The entire strategy is predicated on the City's ability to win its legal proceedings. If the City is unable to prevail in any case, it will not be able to meet its' policy objectives of cleaning up the groundwater and will have introduced a strategy that may be questioned or challenged."**

According to the PFM Report Page 2-3, Lehman has, "a first lien on Program Receipts... Program Receipts consist of all proceeds and recoveries... regardless of how such recoveries may be characterized, earmarked or allocated in any judgment, award, settlement..." and **"... the City's acceptance of non-cash settlements will trigger prepayment of COPs out of the City's own funds** with the Accreted Value equivalent to the dollar value of the non-cash settlement."

This is inconsistent with the Report's recommendation on Page 3 that,

**"It is important that any Program Receipts for fees, interest and expenses on the loan are separate and apart from recoveries for environmental remediation. This consideration is important particularly from a policy perspective because the objective of the City is clearly to fund the clean-up, and the City would not want any situation where the loan structure somehow inhibited the funds that would otherwise be available for such a clean-up."**

**"This dynamic is further worth noting because under a situation where there was a limited amount of settlement proceeds for some unforeseen reason, the City and the loan holders could potentially have different interests. For example, there could be different incentives to settle since the loan holders would be paid first in this scenario. Furthermore, the City might be more limited in their ability to settle because a judgment needs to be received that will be sufficient to cover the repayment of the loan as well as the Program"**

PFM Report Page 6, "In reviewing the results, it is clear that the assumptions in regard to the underlying LIBOR rate can have a material effect on the size of the potential repayment. These results are provided below."

Scenario	Repayment	
	Date Requirement	Difference
Average LIBOR	01/01/04 \$ 30,099,480	
Current LIBOR	01/01/04 \$ 30,629,366	\$ 529,886
Max LIBOR	01/01/04 \$ 32,476,739	\$ 2,377,259

**"Another material consideration is the assumed term of the financing. The loan assumption is that settlement or judgment funds will be received within four years... it is clear that any delay in receiving funds, for whatever reason, would significantly effect the loan balance."**

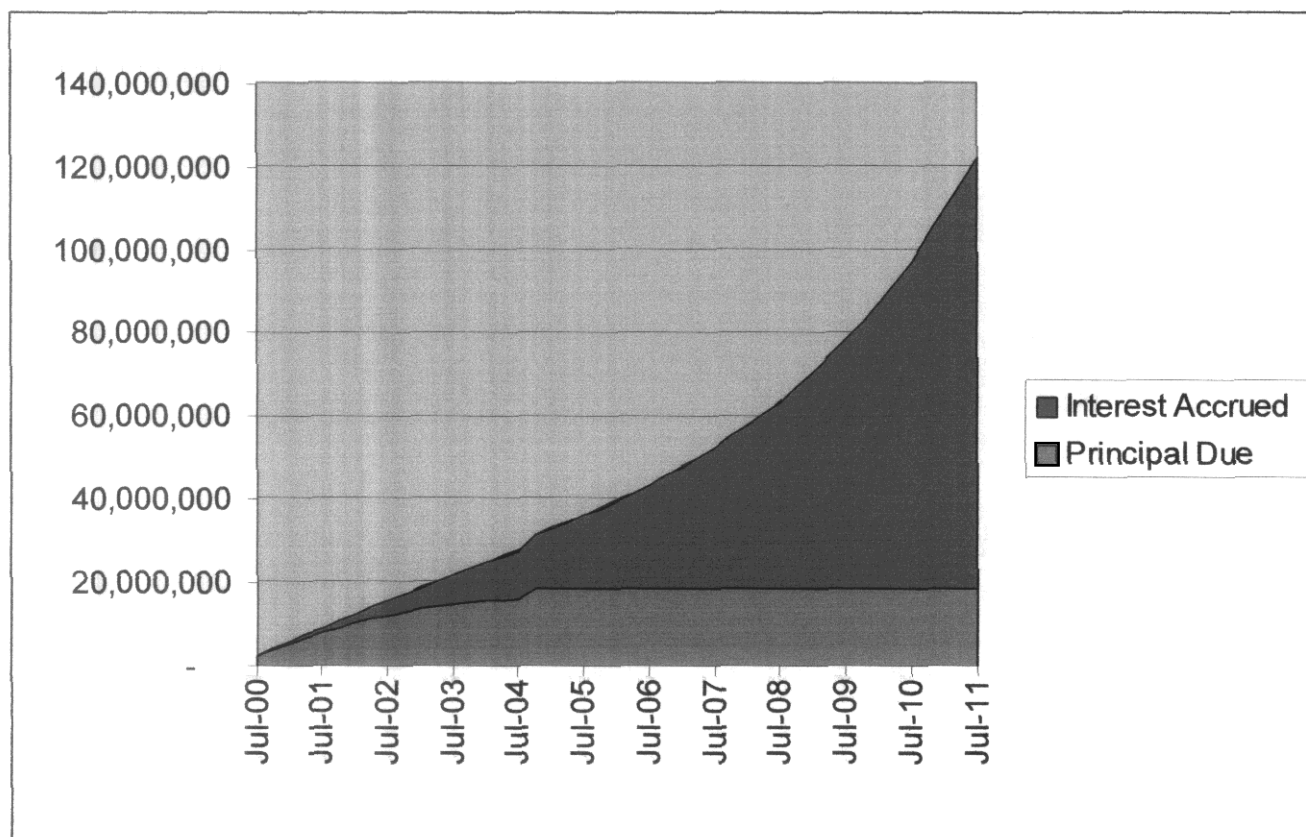
Now Staff and Envision Law are saying it will be another three years (2006) before they can even tell us the extent of the clean-up. At 23% the amount borrowed and compounded interest doubles every three years.

**PFM Report Page 7**, "As the graph illustrates, the repayment requirement can grow as high as \$147 million in ten years assuming LIBOR stays at average levels and as high as \$188 million if LIBOR performs at its ten year highs... With the potential that the repayment requirement could get very large, it is increasingly important that the City is comfortable (i) that there can be no recourse under any circumstances to the City, (ii) that there is no basis for the lender to challenge the City's compliance with the terms and conditions of the loan and (iii) that there is no circumstance whereby the funds available for clean-up would be limited by the size of the loan"

However, the Council never consider the issues contained in the December 21, 1999 PFM report because Staff had already secured their approval to proceed more than 45 days earlier on November 3, 1999.

**November 3, 1999 (TAB 4)** City of Lodi City Council Minutes indicate that City Attorney Hays stated on page 6,

"What is before the City Council is a recommendation to move forward with financing, which incorporates an elaborate budget developed to provide funding for our legal program as we have developed it..."



**Page 7** "Council Member Hitchcock expressed her concern with moving forward and asked for clarification regarding the documents provided."

"City Attorney Hays reminded Council that certain contents and strategies with the documents are confidential and must remain so for the success of the project..."

"Council Member Pennino voiced his concern in retaining the confidentiality of these documents and the City's strategies, ..."

Council Member "Nakanishi fully supports this program and would like to see the Council move forward."

Mayor Land stated, "at this time we have few options left."

Mayor Pro Tempore Mann said, "that while he cannot recite all the details, he relies on the City Manager, City Attorney and the professionals they have consulted regarding this proposal..."

And the City Council, on motion of Mann, Land second, adopted Resolution No. 99-180 by the following vote:

Ayes: Council Members - Mann, Nakanishi, Pennino and Land (Mayor)

Noes: Council Member - Hitchcock

By a 4 to 1 vote the Council approved borrowing \$16 million at LIBOR plus 20% plus a \$3,250,000 commitment fee, which equals 22 points (\$3,250,000/\$15,000,000). The only thing more overpriced than our attorneys was our financing, which has narrowed our legal options as it consumes the funds that would otherwise be available for clean up.



Its important to note that this was a financing document, which did not provide any legal advice or strategies. Unfortunately, Council member Hitchcock's questions regarding the Lehman Loan were sidestepped by false claims that the **"documents are confidential and must remain so for the success of the project..."**

However, a review of the Ruling attached at (Tab 3) Page 7 makes it clear that these documents were not confidential.

"The communication between Lehman and Lodi were made in furtherance of their business deal that funds this litigation. **A review of these communications does not reveal any indicia of legal advice** or representation or an attorney-client relationship."

**October 17, 2001, City Council Minutes (TAB 5)** Page 8-9 indicate that questions about the lawsuit's financing strategy were once again sidestepped by **claiming they were confidential.**

**City Attorney Hays' Council Communication entitled Review of PCE/TCE Financing (TAB 6) stated,**

"The City Council at its regular meeting of November 3, 1999...put into place monies upon which the City could draw to continue activities relative to the City's enforcement activities involving PCE/TCE groundwater and soil contamination within the City of Lodi."

City Manager Flynn distributed a document, which was prepared in response to Ms. Hitchcock's request regarding **how much money had been paid in interest on the amount of money that had already been drawn down...** ,

In reply to Council Member Hitchcock, Account Manager Ruby Paiste reported that as of August 2001, \$5.8 million has been spent out of the \$9.2 million drawn. Discussions ensued regarding the practice of drawing large sums of money..., while paying 23% interest on the sum for the period time pending its disbursement"

**Mayor Nakanishi "Details about the litigation cannot be discussed, as it could cause harm to the City's case... Council has been provided with information that is favorable.** He asked for support toward completing the process..."

Period Ending	Beginning of Quarter Balance	LIBOR Rate	Plus 20% Risk Premium	Quarterly Interest Expense	Accrued Interest	Compounded Interest	Quarterly Loan Draws	Cumulative Drawdown	Ending Balance	Required Payment Due at Maturity
July 1, 2000	-			-			2,250,000	2,250,000	2,250,000	2,250,000
October 1, 2000	2,250,000	6.6310%	26.6310%	149,799	149,799		1,500,000	3,750,000	3,750,000	3,750,000
January 1, 2001	3,750,000	5.1660%	25.1660%	235,931	385,731		1,500,000	5,250,000	5,250,000	5,250,000
April 1, 2001	5,250,000	4.0340%	24.0340%	315,446	701,177		1,500,000	6,750,000	6,750,000	6,750,000
July 1, 2001	6,750,000	3.2537%	23.2537%	392,406	1,093,583	1,093,583	1,125,000	7,875,000	8,968,583	8,968,583
October 1, 2001	8,968,583	2.0650%	22.0650%	494,729	1,588,312		1,125,000	9,000,000	10,093,583	10,093,583
January 1, 2002	10,093,583	1.9377%	21.9377%	553,574	2,141,886		1,125,000	10,125,000	11,218,583	11,218,583
April 1, 2002	11,218,583	1.9045%	21.9045%	614,344	2,756,230		1,125,000	11,250,000	12,343,583	12,343,583
July 1, 2002	12,343,583	1.8330%	21.8330%	673,744	3,429,973	2,336,391	750,000	12,000,000	15,429,973	15,429,973
October 1, 2002	15,429,973	1.6467%	21.6467%	835,019	4,264,992		750,000	12,750,000	16,179,973	16,179,973
January 1, 2003	16,179,973	1.3240%	21.3240%	862,554	5,127,546		750,000	13,500,000	16,929,973	16,929,973
April 1, 2003	16,929,973	1.2342%	21.2342%	898,736	6,026,282		750,000	14,250,000	17,679,973	17,679,973
July 1, 2003	17,679,973	1.2342%	21.2342%	938,550	6,964,833	3,534,859	375,000	14,625,000	21,589,833	21,589,833
October 1, 2003	21,589,833	1.2342%	21.2342%	1,146,107	8,110,940		375,000	15,000,000	21,964,833	21,964,833
January 1, 2004	21,964,833	1.3240%	21.3240%	1,170,945	9,281,885		375,000	15,375,000	22,339,833	22,339,833
April 1, 2004	22,339,833	1.3240%	21.3240%	1,190,936	10,472,821		375,000	15,750,000	22,714,833	22,714,833
July 1, 2004	22,714,833	1.3240%	21.3240%	1,210,928	11,683,749	4,718,916	250,000	16,000,000	27,683,749	27,683,749
October 1, 2004	27,683,749	1.6467%	21.6467%	1,498,152	13,181,901			16,000,000	27,683,749	29,933,749
January 1, 2005	27,683,749	1.6467%	21.6467%	1,498,152	14,680,054			16,000,000	27,683,749	29,933,749
April 1, 2005	27,683,749	1.6467%	21.6467%	1,498,152	16,178,206			16,000,000	27,683,749	29,933,749
July 1, 2005	27,683,749	1.8330%	21.8330%	1,511,048	17,689,254	6,005,505		16,000,000	33,689,254	35,939,254
October 1, 2005	33,689,254	1.8330%	21.8330%	1,838,844	19,528,098			16,000,000	33,689,254	35,939,254
January 1, 2006	33,689,254	1.8330%	21.8330%	1,838,844	21,366,941			16,000,000	33,689,254	35,939,254
April 1, 2006	33,689,254	1.9045%	21.9045%	1,844,866	23,211,807			16,000,000	33,689,254	35,939,254
July 1, 2006	33,689,254	1.9045%	21.9045%	1,844,866	25,056,673	7,367,419		16,000,000	41,056,673	43,306,673
October 1, 2006	41,056,673	1.9045%	21.9045%	2,248,315	27,304,988			16,000,000	41,056,673	43,306,673
January 1, 2007	41,056,673	1.9377%	21.9377%	2,251,719	29,556,707			16,000,000	41,056,673	43,306,673
April 1, 2007	41,056,673	1.9377%	21.9377%	2,251,719	31,808,426			16,000,000	41,056,673	43,306,673
July 1, 2007	41,056,673	1.9377%	21.9377%	2,251,719	34,060,145	9,003,472		16,000,000	50,060,145	52,310,145
October 1, 2007	50,060,145	2.0650%	22.0650%	2,761,443	36,821,587			16,000,000	50,060,145	52,310,145
January 1, 2008	50,060,145	2.0650%	22.0650%	2,761,443	39,583,030			16,000,000	50,060,145	52,310,145
April 1, 2008	50,060,145	2.0650%	22.0650%	2,761,443	42,344,473			16,000,000	50,060,145	52,310,145
July 1, 2008	50,060,145	3.2537%	23.2537%	2,910,205	45,254,678	11,194,533		16,000,000	61,254,678	63,504,678
October 1, 2008	61,254,678	3.2537%	23.2537%	3,560,990	48,815,667			16,000,000	61,254,678	63,504,678
January 1, 2009	61,254,678	3.2537%	23.2537%	3,560,990	52,376,657			16,000,000	61,254,678	63,504,678
April 1, 2009	61,254,678	4.0340%	24.0340%	3,680,487	56,057,144			16,000,000	61,254,678	63,504,678
July 1, 2009	61,254,678	4.0340%	24.0340%	3,680,487	59,737,631	14,482,954		16,000,000	75,737,631	77,987,631
October 1, 2009	75,737,631	4.0340%	24.0340%	4,550,696	64,288,327			16,000,000	75,737,631	77,987,631
January 1, 2010	75,737,631	5.1660%	25.1660%	4,765,033	69,053,360			16,000,000	75,737,631	77,987,631
April 1, 2010	75,737,631	5.1660%	25.1660%	4,765,033	73,818,393			16,000,000	75,737,631	77,987,631
July 1, 2010	75,737,631	5.1660%	25.1660%	4,765,033	78,583,426	18,845,795		16,000,000	94,583,426	96,833,426
October 1, 2010	94,583,426	6.6310%	26.6310%	6,297,128	84,880,554			16,000,000	94,583,426	96,833,426
January 1, 2011	94,583,426	6.6310%	26.6310%	6,297,128	91,177,682			16,000,000	94,583,426	96,833,426
April 1, 2011	94,583,426	6.6310%	26.6310%	6,297,128	97,474,810			16,000,000	94,583,426	96,833,426
July 1, 2011	94,583,426	6.6310%	26.6310%	6,297,128	103,771,938	25,188,512		16,000,000	119,771,938	122,021,938

April 2, 2003 (TAB 7), the foundation of the City Attorneys' legal strategy begins to erode as the News-Sentinel reported in an article entitled, "Dry cleaner won't be forced to investigate, clean up contamination on its own"

"A federal Judge referring to it as **"unusually protracted and costly litigation,"** ruled that a Lodi dry cleaning business will no longer be forced to investigate and clean up groundwater contamination on its own -- a move considered a victory over the city.

In his ruling, the Judge cited the city of Lodi's "belated admission" that the city is potentially responsible for the contamination.

The Judge went on to say that **the city's strategies have "led to unproductive detours from the ultimate goal of dealing with the city's contaminated groundwater crisis."**

(TAB 8) That same day the Lodi News reported in an article entitled, **Mayor, City Manager to attend hearing for pollution case,**

"Lodi's mayor and the city manager have been asked -- actually nearly ordered -- to attend a mediation hearing regarding the city's ongoing pollution lawsuit against local businesses. Judge Edward A. Infante called city officials last week and was "rather firm" about his request, City Manager Dixon Flynn said.

"When Infante called Mayor Hitchcock, he told her that representatives from the city had not attended past mediation hearings, and attorneys hadn't even attended every time,..."

Hitchcock said, "As far as I know, he just wants to know that the council is aware of what's going on in mediation. He said a lot of money is being spent and no cleanup is being done, and that concerns him,"

The news coverage made it apparent that the City Attorney and Councilman Land opposed the Mayor's attendance at mediation hearings from the start,

"My question is, will the chief executive officers of the insurance companies be in attendance so they know what's going on?"

"This question was echoed by City Attorney Randy Hays, but when he asked Infante about it, the judge called Hays an "obstructionist"

June 26, 2003 (TAB 9) the Record reported in an article entitled, **Lodi mayor in councilman's sights**

"Hitchcock, the leading vote-getter in the 2002 election, said she merely told Infante after the hearing that the City Council hadn't been shown a proposed settlement offer from a downtown property owner."

"Hays said he didn't ask the council to consider the offer, because it wasn't acceptable based on parameters -- including recovery of legal fees -- the City Council established in 1997, one year before Hitchcock's election."

The voters rejected two members of the 1997 Council because they rubberstamped Staff's recommendations while Mayor Hitchcock was the leading vote getter in the 2002 election because she is a watchdog not a lapdog.

Moreover, the decisions of the 1997 Council do not supersede your authority and a lot has changed since 1997. The City has lost 45 out of 50 rulings and a Federal Judge has ruled that the City is potentially responsible for the contamination and that **the city's strategies have "led to unproductive detours from the ultimate goal of dealing with the city's contaminated groundwater crisis."**

We have spent almost \$21 million dollars on an ill-conceived legal strategy. We have borrowed another \$5 million from the water fund. We will have to pay Lehman another \$2,250,000 upon termination of the financing and our Attorney will get 20% of our recoveries. This means we will have to secure \$30 million-dollar judgment before we can put the first dollar in the ground to clean up our water.

July 2, 2003 (TAB 3) This Council met in closed session regarding the City's ground water contamination lawsuit, yet the City Attorney failed to apprise the Council of a recent ruling by Federal Judge Damrell, which was a stinging rebuke of the City's strategy to finance litigation for profit when it stated on Page 10,

"Here, sound public policy runs counter to Lehman's claim of privilege. The business transaction between Lehman and Lodi to fund environmental litigation for profit could undermine the efficient and effective remediation because the investment bank does not seek to remediate, instead, it seeks to recover its investment and make an extraordinary profit. To the extent Lehman's financial arrangement with Lodi conflict with the goal of cleaning up environmental contamination, sound public policy counsels against encouraging such arrangements."



The Transcripts of Proceedings on July 11, 2003 yielded useful insight into the mindset of Judge Damrell. It's clear that he is supporting the two State agencies (Department of Toxic Substance Control (DTSC) and the State Water Resources Board as they move to settle with litigants for clean-up, leaving the City holding the Lehman bag, which makes it clear why the City's Attorneys and Staff tried to keep the Mayor from attending proceedings.

**July 11, 2003 Transcripts of Pre-Trial Proceedings (TAB 10)**

**Page 10 Judge Damrell:** I don't know if the city is going to respond to this, but I want to get my thoughts out on this. This has been a very expensive piece of litigation. I've heard argument of counsel and millions and millions of dollars and it – if there is going to be a full remediation of the site under the lead of the DTSC, then what role – why does the city want to spend more money to get injunctive relief when the state has gone ahead and basically assumed that role in place of the city?

**Page 11 Judge Damrell:** Why don't you talk to DTSC about that? It seems to me they have the resources, the expertise, they are taking the role of – obviously they are doing what they are doing because the city has not been able to assume its lead agency role sufficiently or adequately, and that's why they are doing what they are doing. That's why they said in their declaration why wouldn't this be an opportunity for the city instead of spending more money, here you have the state doing exactly what should be done, and I don't know what it's going to cost the city, it seems to be less expensive to spend money than the city continuing its enforcement. It strikes me as being redundant and highly expensive and unnecessary.

**Page 15-16 Judge Damrell:** If it fails to do its job, we'll take that up, but it seems to me that for the city to expend more fund, to file more motions for injunctions and deal with these issues, that may be fine for scholars to discuss, but is not going to advance the clean up of the site. That is a waste of my resources and a waste of the city's resources and a waste of the Defendant's resources...

**Page 16 Judge Damrell:** Why would you want to take the time of this Court to go through these motions for injunctive relief and seeking declarations for nuisance and – I mean, the state is going forward to clean up the site, isn't that what we are here for? Why isn't that foremost in your mind? It's going to save the city a lot of money, save you have a lot of the time, save me a lot of time and save the Defendants time and money.....

**Page 42-42 Judge Damrell:** Counsel, stop and think about this... You are telling me the DTSC RAO just isn't good enough for you and the City of Lodi, you are going to spend more money, more time to seek more relief of some type above and beyond what the state is asking Guild to do. Now, that seems to be a waste of time.

Mr. Donovan: Your Honor –

**Judge Damrell:** And a waste of the city's money.

It's not a waste of time if you're Mr. Donovan billing \$415 per hour 18 hours per day or over \$150,000 per month.

Mayor Hitchcock was the only one to question the transaction between Lehman and Lodi to fund environmental litigation for profit.

On **November 3, 1999** (TAB 4) when the City Council was asked by City Attorney Hays for permission to “move forward with financing, which incorporates an elaborate budget to provide funding for our legal program...”

“**Council Member Hitchcock** expressed her concern with moving forward and asked for clarification regarding the documents provided.”

“**City Attorney Hays** reminded Council that the strategies with the documents are confidential and must remain so for the success of the project...”

“**Council Member Pennino** voiced his concern in retaining the confidentiality of these documents and the City's strategies, ...”

**Mayor Land** concluded, “at this time we have few options left.”

As a result the City Council, on motion of Mann, Land second, approved borrowing \$16 million dollars at LIBOR plus 20% by the following vote:

Ayes: Council Members - Mann, Nakanishi, Pennino and Land (Mayor) [If it's true that they support the censure They were wrong then and they are wrong now.]

Noes: Council Member - Hitchcock

And now even after the Court has ruled that, “The business transaction between Lehman and Lodi to fund environmental litigation for profit could undermine the efficient and effective remediation...” as it rejected attempts to keep the dealings between Lehman and Lodi secret; some still refuse to acknowledge the Mayor's wisdom and would rather scapegoat the Mayor than accept accountability for their roles in this debacle.

## Our City Attorney has a history of keeping City Councils in the Dark (TAB 11):

### **COUNCIL WAS KEPT IN DARK ABOUT BONDS**

Published: December 22, 1994 in the Redding Searchlight Newspaper

**"Top Redding officials knew for five months that insurance was missing on a \$38 million turbine power project but withheld the information from the City Council to avoid jeopardizing the venture, according to a report released Wednesday by Interim City Manager Sam McMurry.**

**McMurry said he, City Attorney Randy Hays and former City Manager Robert Christofferson knew in December 1993 that Santa Rosa developer MLP Energy had not acquired performance and payment bonds for the turbine power project on Clear Creek Road.**

**Together with Electric Department Director Sam Lindley, they opted not to tell the City Council because the law would obligate them to inform the council in public...**

Hays' actions that resulted in his forced resignation evidence a serious lack of judgment, which put taxpayers at risk. Again according to the Redding Newspaper:

### **CITY OFFICIAL IN JEOPARDY OF LOSING JOB**

Published: October 20, 1994 in the Redding Searchlight Newspaper

**"The Redding City Council has questioned its attorney's handling of several issues, including a turbine power project and a downtown toxic mess.**

City officials say problems with both projects could cost Redding more than \$2 million. Hays was unavailable for comment Wednesday

**"Most recently, council members questioned Hays' judgment for approving a contract to buy contaminated land from Southern Pacific Transportation Co. without holding the railroad responsible for the pollution.**

RABA officials say the unexpected cleanup could cost the city more than \$1 million. Hays said last month the city could recover much of the money because it had no way of knowing the extent of the pollution.

Earlier this year the council bypassed Hays and hired another attorney to fend off more than \$20 million in claims resulting from the city's failure to acquire payment and performance bonds for its \$38 million turbine power project on Clear Creek Road.

City officials estimate that error could eventually cost the utility up to \$1.3 million. Hays said he wasn't responsible for making sure the bonds were in place.

In 1990, Hays accepted blame for failing to carry out City Council orders to lock up the purchase of the 3,000-acre Hunt Ranch.

The city planned to use the land to open a firing range, but it was purchased by someone else because Hays did not open escrow. The city had spent \$60,000 for environmental studies on the property."

### **STATE PROBES CITY OVER POWER PLANT**

Published: August 27, 1994 in Reading Searchlight Newspaper

The state's probe could result in fines of up to \$15,000 for the project developer and lesser penalties for the city official who approved the contract.

**The state attorney general's office this week began investigating whether the city of Redding hired a developer knowing the company may not have had a state-required contractor's license.**

Larry Brandon, a supervisor with the licensing board. "You don't see many unlicensed contractors getting into contracts to build \$30 million power plants."

### **LICENSING SNAFU MAY LIMIT SUIT ON PROJECT**

Published: June 04, 1994 in Redding Searchlight Newspaper

**"Failing to check the credentials of a developer may have undermined the city of Redding's ability to enforce a \$38 million contract for a power turbine project, a state licensing official said Friday.**

Tom Reemts, a deputy with the Contractors' State Licensing Board office, said Santa Rosa developer MLP Energy failed to obtain a state contractor's license before starting work in 1992 on the Clear Creek Road project.

**As a result, "The city would have no legal standing in court if they decided to sue," "They've got themselves in a bad spot and now the city has to decide how they are going to get out of it."**

Compounding these problems, city officials reported in April that MLP had failed to acquire performance and payment bonds -insurance policies used to prevent a work stoppage and pay any claims from a contractor."



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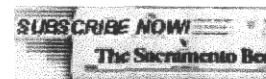
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## LODI BATTLING INSURERS OVER POLLUTION CLEANUP

September 26, 1999  
Section: MAIN NEWS  
Page: A1

By Chris Bowman Bee Staff Writer

LODI--Since the 1940s, Lodi's underground water supply has been threatened by dry cleaning fluids and other industrial solvents that have trickled down from neighborhood businesses. The contamination, affecting 600 acres in Lodi, has knocked out four public wells since its discovery 10 years ago. Though there is no immediate health danger, the pollution continues to spread into aquifers, the sole source of drinking water for this city of 58,000.

Lodi is not unlike many other California communities that have had their drinking water threatened by these subterranean plumes of perchloroethylene (PCE) and trichloroethylene (TCE) - "probable" cancer-causing chemicals in the view of public health officials.

But no other community has gone as far as Lodi in trying to keep the city, its residents and the local businesses that generated the pollution from having to pay a dime toward the cleanup, a multimillion-dollar job estimated to take at least 20 years.

"This city is a very business-friendly town. It will do just about anything it can to accommodate them," said Randall Hays, the city attorney.

And that is where high-priced Bay Area attorney Michael C. Donovan comes in. Lodi hired Donovan about three years ago at the top-tier rate of \$415 an hour.

Since then, the city has invested nearly \$8 million in legal and consulting fees.

It's all part of a novel strategy crafted largely by Donovan to go directly after insurance assets of the small businesses on the contaminated properties while leaving the owners financially unscathed.

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The city has identified more than 40 businesses - ranging from dry cleaners to auto-repair garages and print shops - as parties "potentially responsible" for the pollution.

The frontal attack has mobilized the giants of America's insurance industry against this Valley town. But it also has attracted big-time investor interest in funding the city's legal battle, hoping it will capture a big chunk of the insurance money.

For its money, Lodi has secured one settlement - \$1 million from Employers Insurance of Wausau on behalf of a defunct Lodi manufacturer of silicone rubber. But the city is not close to turning its first spade of solvent-saturated dirt in the cleanup; it has yet to produce a work plan acceptable to state environmental officials who oversee contaminated sites.

"It has developed neither a solution to its contamination problem nor reliably estimated the cost of doing so," the American Insurance Association said last June in urging the 9th U.S. Circuit Court of Appeals to quash Lodi's enforcement orders against its member companies. "Instead it has devoted its available funds to a litigation campaign designed to evade its responsibility for any cleanup costs."

Lodi has successfully fought to become the first city in California to take charge of a major environmental restoration project, a job that has been the purview of state or federal environmental regulators. The city negotiated a deal with the state Department of Toxic Substances Control that gave it authority to devise its own strategy for cleanup and enforcement, subject to certain requirements and deadlines. The state also agreed not to go after the city for contamination that could be attributed to leaks in its sewer system.

The City Council adopted an unusual, Donovan-crafted law giving itself broad authority to compel financial information from insurers and impose criminal sanctions and heavy fines for refusal to comply.

City officials up and down California are watching Lodi blaze the trail to see if it's one to follow.

"If he (Donovan) is able to do it, and make it so the city comes clean without any loss in funds, that will be great," said Michael Brady, a Sacramento attorney who represents the city of Davis in its underground contamination cleanup.

Named MERLO - Municipal Environmental Response and Liability Ordinance - the Lodi ordinance enacted in 1997 packs more punch than the dry red wine merlot whose grapes are grown in the region.

"The city's powers are virtually unlimited and authorize Lodi to pursue insurers directly, even though such direct actions against insurers are inconsistent with federal and state law," said Laura Kersey, an attorney with the Insurance association.

Insurance companies so far have managed in court to keep Lodi's enforcement orders and subpoenas at bay.

In the case before the federal appellate court, Fireman's Fund Insurance Co. and other insurers argue that the potent portions of the Lodi ordinance are pre-empted by the federal Superfund law, which establishes liability for environmental cleanups.

In the state courts, the 3rd District Court of Appeal recently ruled that Lodi could not assert its legislative powers under the California Constitution to subpoena policy information from insurers - in this case, Connecticut Indemnity Co. - as it would violate companies' privacy rights. Lodi is appealing the case to the state Supreme Court.

The city also is appealing a ruling by a Sacramento Superior Court judge who not only quashed a similar effort to compel information from USF&G Corp. but ordered the city to pay the insurance holding company \$50,000 for its legal costs.

Despite the legal complications, Donovan said he has identified "probably more than \$500 million" in insurance assets potentially available for the cleanup. His San Mateo firm, **Envision Law** Group on Fashion Island Boulevard, specializes in "insurance archaeology" - uncovering layers of policy coverages and sorting out those that could be tapped for damages.

Donovan has 20 years' experience representing other states in environmental cleanups. But that experience comes at prices seldom seen in accounts receivable at Lodi City Hall.

The city paid \$768 for one attorney's three nights' stay at the three-star Dinah's Garden Hotel in Palo Alto. It paid \$3,931 to send Hays, the city attorney, and Donovan to meet in New York City last June with a prospective financial backer for the city's legal battles. That was air fare only. Donovan and company regularly fly between the Bay Area and Lodi with fares ranging from \$300 to \$700 per round trip.

Two years and nine months after hiring Donovan, Lodi's expenditures for legal and technical help have mounted to more than \$5.3 million, with another \$2.4 million due.

Donovan and Hays express no doubt that the city will more than recover all expenses incurred. It's just a matter of time, they say, before the insurance companies stop flexing their muscles and start coming to the settlement table.

Insurance companies generally are required by state laws to defend policyholders, at least in cases where they have been sued, which Lodi has yet to do. And under a recent change in state law, insurers must include the costs of investigating contaminated sites as part of the duty to defend.

In the case of Lodi's groundwater pollution, such an investigation is expected to run in the tens of millions of dollars. Insurers looking at such high numbers outside their policy limits are inclined to settle.

"The way the laws are designed, we can't lose," Hays said.

Lehman Brothers, a global investment bank, apparently believes the city has a good shot at collecting big money. The company plans to give the city \$16 million to extend its legal battle while expecting to recover as much as \$20 million, including interest, from judgments or settlements against insurance companies. Donovan's firm would get 20 percent of the insurance money collected on top of the \$65,000 it charges monthly for its services.

"When you get the backing of Wall Street, you have a case," Mayor Keith Land said. "Look out, insurance companies, you'd better line up."

But some wonder whether the only cleaning up in Lodi will be by lawyers and

consultants.

Skeptics include two newcomers to the Lodi City Council - Alan Nakanishi, an eye surgeon, and Susan Hitchcock, a school administrator. They would like to have seen more money going sooner toward restoring the water supplies or at least containing the spread of the industrial solvents. But they believe it's too late to reverse the course set by incumbents in late 1996.

"It's very difficult to stop the train from going forward," Nakanishi said.

Most Lodi residents seem unaware of the exorbitant battle, said Nakanishi, who was elected to the City Council last fall.

"It is the most important issue going on in Lodi, and most people don't know what is happening," Nakanishi said. "No one has even written to me about this."

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Public Financial Management  
Financial and Investment Advisors

December 21, 1999

Mr. H. Dixon Flynn  
City Manager  
City of Lodi  
221 West Pine Street  
Lodi, CA 95241  
Fax: (209) 333-6807

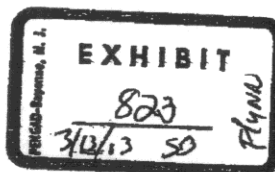
Dear Mr. Flynn:

In accordance with your request, we have prepared this final report to outline certain factors that the City of Lodi (the "City") might wish to consider in regard to the Environmental Public Nuisance Abatement Program (the "Program"). As you know, PFM is not a law firm, and we cannot - and have not by virtue of this report intended to - opine on the legal merits or validity of any proposed program or structure or as to the likelihood of success. The purpose of this memo is solely to identify some considerations and underlying assumptions that the City can use in helping to make a determination as to the proposed financing program. These considerations are not intended to be all-inclusive, and there may be additional factors, events or changes in circumstances that the City should consider now or in the future. This memo should not be construed as any type of PFM endorsement as to the merits of the financing strategy or the Program. The City will need to reach its own conclusions in regard to the risks and the appropriateness of the strategy and Program from a financial, legal and policy perspective.

#### Background

The City is currently exploring options to fund a sizable clean-up of the groundwater. These options include the possibility of legal action against the contaminators. These legal proceedings would allow the City to pursue third-party insurance companies who have provided insurance against such events. At issue is how much any proceedings will cost and how long will they take, if successful, to generate funds for the Program. It is our understanding that the City estimates that the proceedings will take approximately four years and will cost approximately \$15 million.

In order to provide funds for this effort, the City is considering a non-recourse loan of approximately \$16 million. The loan will be structured as a Certificates of Participation ("COPs") financing. This loan will have a commitment fee of \$3,250,000 and will pay interest based on 3 month London Inter Bank Offering Rate (LIBOR) plus 20%. The commitment fee is



B-DTSC003576





Loan Manager  
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broken into two components, with \$1 million due at closing and the remainder due at the termination of the financing. The remainder will also be reduced by any interest that is paid on the loan balance. The interest rate on the loan will be adjusted quarterly and compounded annually. This means that interest will be calculated every quarter but the accrued interest will not be added to the balance of the loan until year-end. The maximum interest rate payable under the loan would be 30%.

While many factors clearly overlap, we believe that there are certain legal, financial and credit considerations that the City should examine to make an informed decision as to the merits and potential risks of the strategy. The purpose of this report is to provide a framework for the City to review these considerations. These factors are based off of our review of the proposed legal documents dated October 26, 1999, including the Executive Summary dated October 25, 1999, and the proposal and term sheet from Lehman Brothers dated July 29, 1999. PFM has not undertaken to make an independent verification or to assume responsibility for the accuracy, completeness, validity or fairness of the information and approach in the aforementioned documents, and makes no representation in regard to any changes that may or may not have occurred since the dates of the respective drafts.

### Legal Considerations

Underlying Legal Argument – The most important consideration in this strategy is the underlying legal argument. The entire strategy is predicated on the City's ability to win its' legal proceedings. If the City is unable to prevail in any case, it will not be able to meet its' policy objectives of cleaning up the groundwater and will have introduced a strategy that may be questioned or challenged. The underlying legal argument also extends to the validity of the proposed financing structure. This structure is based on traditional Certificates of Participation (COP) financing. Traditional COP financing is widespread and is a common method of financing in the State, although we are unaware of any COP financing secured solely by legal proceeding recoverables.

Flow of Funds and Security – Another legal consideration is the flow of funds and the security structure of the proposed loan. It is our understanding that the loan will be non-recourse to the City. This means that the loan will only be secured by potential settlement payments ("Program Receipts") and no assets or revenues of the City will be directly or indirectly pledged to the benefit of the loan holders. There is a first lien on Program Receipts and only Permitted Deductions are allowed. Program Receipts consist of all proceeds and recoveries... regardless of how such recoveries may be characterized, earmarked or allocated in any judgment, award, settlement or other agreement or payment."

Settlement(s) – Another consideration is the form of any settlement, including any requirements or restrictions that govern the potential use of proceeds. The availability of funds for the

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LAURENCE M. ROSENTHAL  
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environmental remediation cannot be effected by the loan. The repayment of the loan must be an additional cost to be recovered from the insurance companies. The structure also limits that amount of non-cash settlements without a corresponding reduction in the outstanding COPs. Specifically, "if any of the COPs are outstanding, the City's acceptance of non-cash settlements will trigger prepayments of COPs out of the City's own funds with an Accreted Value equivalent to the dollar value of the non-cash settlement." While we are not aware of the likelihood of such a type of settlement, the City would want to be comfortable that this requirement in no way limits the City from any strategy it would otherwise pursue.

It is important that any Program Receipts for fees, interest and expenses on the loan are separate and apart from recoveries for environmental remediation. This consideration is important particularly from a policy perspective because the objective of the City is clearly to fund the clean-up, and the City would not want any situation where the loan structure somehow inhibited the funds which would otherwise be available for such a clean-up. This dynamic is further worth noting because under a situation where there was a limited amount of settlement proceeds for some unforeseen reason, the City and the loan holders could potentially have different interests. For example, there could be different incentives to settle since the loan holders would be paid first in this scenario. Furthermore, the City might be more limited in their ability to settle because a judgement needs to be received that will be sufficient to cover the repayment of the loan as well as the Program.

Unwind - The ability to unwind the transaction is governed in part by the provisions in regard to cessation. Interest on the loan accrues for 36 months from the date of such cessation. The COPs also have a nominal final maturity as of January 1, 2029. The City will want to understand at what point the COPs or the City's obligation to proceed with litigation disappear if no settlement or judgement is achieved. This is particularly important given the very high interest rate on the loan and the compounding effect of the structure.

Indemnification - The agreement requires the City to indemnify Lehman Brothers and even includes an acknowledgment by the City that the recovery of Program Receipts is "uncertain and speculative." It is also worth noting that this indemnification includes "any proceeds generated from any and all insurance or self-insurance program in which the City has participated or will participate."

#### Financial Considerations

Costs - The agreement specifically passes certain costs to the City. These include the Trustee, the Placement Agent Fee and the cost of any proceeding necessary to ensure the validity of the COPs. In the case of the placement fee, Lehman is not obligated to purchase any of the COPs, but the City is obligated to pay Lehman's fees from COP proceeds. Moreover, the City is limited

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in its ability to seek damages should an investor fail to purchase the COPs. This limitation is equal to 10% of the authorized but unissued COPs.

**Interest Rate** - One consideration with the proposed loan is the interest rate. The rate for 3 month LIBOR as of December 21, 1999 was 6.17%. When added to the assumed loan spread of 20%, this results in all-in current interest rate of 26.17%. In evaluating this rate, there are several factors that the City might consider.

First, the level of the interest is quite high, but it is difficult to assess if this rate is reasonable since there are few comparable transactions to draw upon. We are unaware of any transaction that is exactly like the one the City is contemplating. It is likely that the purpose of the financing will require a taxable borrowing. The thirty-year Treasury Security was approximately 6.43% on December 20, 1999, and even assuming a credit spread of 1.00% to 2.00% for a high-grade, taxable municipal bond, long-term, taxable municipal rates would be 7.50% to 8.50%. Only last week, the City of Long Beach served as a conduit issuer for a private, non-profit homeowners association in connection with the purchase of some land. This transaction was federally taxable and resulted in a 9.40% interest rate for bonds maturing in 2030. However, this transaction also carried bond insurance from American Capital Access (ACA), which has an "A" rating, and utilized a "super-sinker" approach whereby bonds are likely to be paid off prior to maturity.

As another point of comparison, we evaluated the recent interest rate performance of certain securitization transactions. Under a securitization, a municipal entity would "sell" its right to receive future payments. Possibilities include delinquent tax receipts, and more recently, the anticipated revenue to be received under the Tobacco Master Settlement Agreement. One way to review the financing proposal is to think of the strategy as a securitization of Program Receipts. New York City recently sold bonds that were secured solely by the projected tobacco revenues. These bonds had a final maturity of 2039 and had yields ranging from 4.09% to 6.444%. It is important to note that this deal is again not a fair comparison because the bonds were tax-exempt and utilized a unique structure. Maturities for these bonds were rated AA1 to AA3/AA- to A.

It is also worth noting that commercial banks will often charge issuers a taxable interest rate based on un-reimbursed draws from a letter of credit. Letters of credit are used on certain variable rate municipal programs. If an issuer fails to pay principal or interest on any bonds secured by a letter of credit, the commercial bank will pay off the principal and interest on behalf of the issuer and then begin to charge the issuer a "bank rate." The interest rate in this situation generally ranges from LIBOR plus 2.00% to LIBOR plus 4.00%.

The difficulty in using any or all of these transactions as a point of comparison is that they have fundamentally different risk profiles. Investors will charge an interest rate based on their perception of the likelihood of being repaid combined with the timeframe for repayment. The more restricted or less secure the repayment source, the higher the interest rate. In the case of the COPs, there is a very uncertain repayment source. The credit of the aforementioned cases is not

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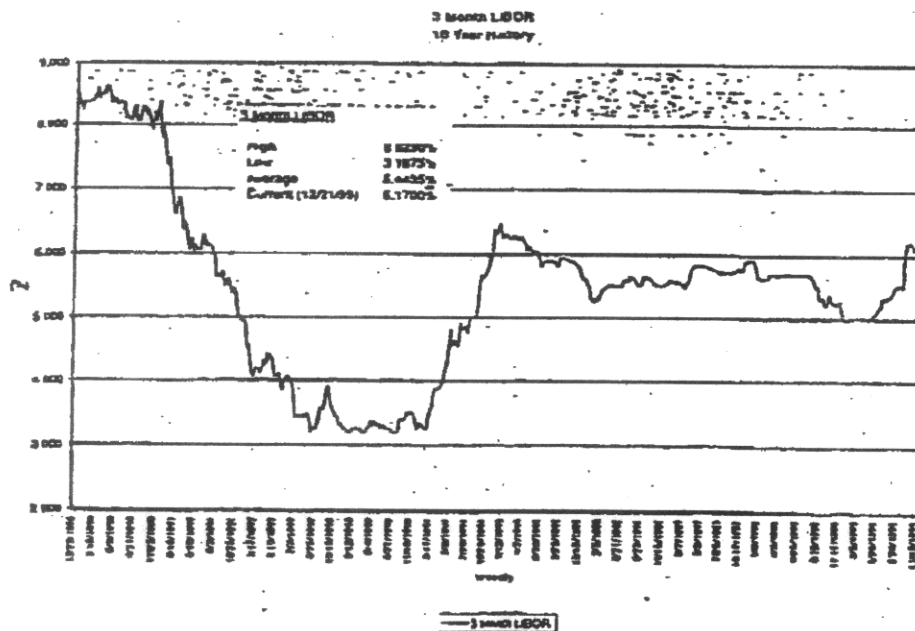


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comparable. Given the uncertainty of the repayment source, it is unlikely that a COP financing secured solely by Program Receipts would receive bond insurance, a letter of credit from a highly rated commercial bank or even possibly, an investment grade rating. This likelihood has nothing to do with the potential success of the approach and instead, only relates to the limited nature of the pledge of repayment.

Notwithstanding the limited nature of the repayment sources or the taxable nature of the borrowing, we still have not been able to identify a comparable loan. However, if the City views the transaction closer to a venture capital transaction given the security structure, then an interest rate in excess of 20% may not be unreasonable. Venture capitalists would typically look for returns on equity that are well in excess of returns on fixed income municipal bonds. It will have to be ultimately the City's determination that it is reasonable to assume that this interest rate represents a return on equity versus a typical loan.

Second, the interest rate is variable. The City has generally assumed an interest rate of 25% in evaluating the loan proposal, but it is important to note that the loan is based off of 3 month LIBOR. This interest rate will change every quarter and it could be higher during the term of the financing. While historical rates are not necessarily an indication of future rates, we have reviewed the past performance of 3 month LIBOR. Provided below is a graph illustrating the trends in this index over the last ten years.



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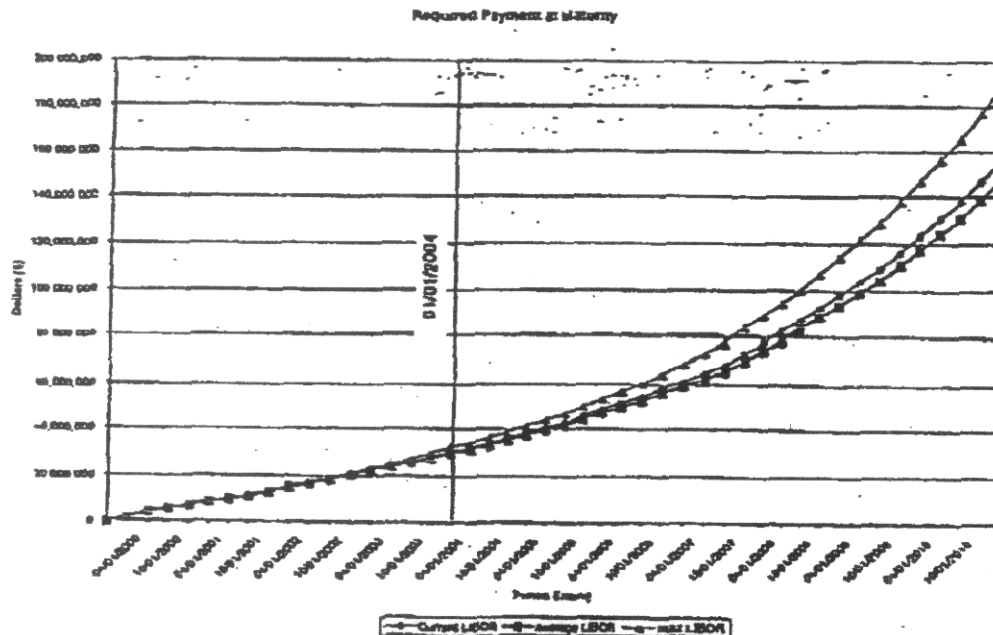


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We have also created a model that will allow the City to test the impact of different interest rate assumptions. These sensitivity analyses include: (i) a scenario where LIBOR remains constant at 6.17%, (ii) a scenario where LIBOR is assumed to be at the average rate of 3 month LIBOR over the last ten years, 5.44% and (iii) a scenario where LIBOR is assumed to be at the highest level that the index has been in the last ten years, 8.62%. Each of these scenarios also assumes that there will be no incremental settlements prior to the repayment date. To the extent that settlement and/or judgement funds are used to reduce the loan balance, the repayment requirement as of January 1, 2004 would be lower. In reviewing the results, it is clear that the assumptions in regard to the underlying LIBOR rate can have a material effect on the size of the potential repayment. Another particular of interest is that current 3 month LIBOR is unusually high due to Y2K concerns. These results are provided below.

Scenario	Repayment Date	Repayment Requirement	Difference
Average LIBOR	1/1/04	\$30,099,480	
Current LIBOR	1/1/04	\$30,629,366	\$529,886
Maximum LIBOR	1/1/04	\$32,476,739	\$2,377,259

Term - Another material consideration is the assumed term of the financing. The loan assumption is that settlement or judgement funds will be received within four years. While we cannot opine on the likelihood of a settlement within this time frame, it is clear that any delay in receiving funds, for whatever reason, would significantly effect the loan balance. The following graph illustrates the growth of the required repayment for the same three scenarios if the term is extended.



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As the graph illustrates, the repayment requirement can grow as high as \$147 million in ten years assuming LIBOR stays at average levels and as high as \$188 million if LIBOR performs at its ten year highs. While the growth in the payment requirements unto themselves may not cause concern given the limited liability of the loan or the likelihood that the loan would stay outstanding for such a period of time, it puts even greater importance on ensuring the legal considerations are accurate. With the potential that the repayment requirement could get very large, it is increasingly important that the City is comfortable (i) that there can be no recourse under any circumstances to the City, (ii) that there is no basis for the lender to challenge the City's compliance with the terms and conditions of the loan and (iii) that there is no circumstance whereby the funds available for clean-up would be limited by the size of the loan.

Budget - Another material consideration is the assumed budget for the legal proceedings. Currently, the budget provides \$15 million for costs over the next four years (excluding the Placement Fee). The City needs to be comfortable that the budget is sufficient and that there are no contingency funds necessary for unforeseen circumstances. This budget will also need to be looked at in the context of the timing of any settlements. Given the size of any potential financial liability for the insurance companies in regard to the City or even other jurisdictions, we would assume that the insurance companies would devote their full resources to defend their cases. The assumed timing of any settlements or judgments should take into consideration the spirited nature of the defense and the likelihood that some cases may be appealed or dragged out to test the resolve and resources of the City.

#### Credit Considerations

Market Perceptions - Another factor that the City might wish to consider is the potential that there might be some negative market perceptions in regard to the City. It is important to note that the loan will be in the form of COPs and will be issued by a newly formed non-profit corporation, the Lodi Financing Corporation. As you know, the premise of a limited recourse or conduit financing is that the issuer, such as a city or county, does not pledge their credit; instead, the issuer simply pledges a specific stream of payments often from another source or entity. This financial structure is not unusual and is often used with lease financing where a building authority acts as a conduit for a city or county. The policy issue that is raised is what moral or political obligation would the City feel to repay the loan if the City is unsuccessful in the legal proceedings. Some communities, particularly those that issue frequently, may feel obligated to make payments from a policy perspective. There are examples where issuers repay loans, even without being legally required, to ensure that the name of the city remains free of any negative media coverage.

Regardless of the nature of the City's limited legal obligation in a non-recourse or conduit financing, it may also be argued that the extraordinary nature of the financing may raise some

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questions in the investor community. Certain investors may associate the City's name on future bond issues with the City's willingness to enter into this type of transaction, potentially causing more limited market access or higher interest rates than otherwise would have occurred on future issues. Under a situation where insufficient settlement funds are derived and the City elects not to repay the loan balance, investors may also view the City's willingness to pay its' debts in a negative light. In each case, the credit and marketability of other issues could theoretically be effected.

However, this potential risk is difficult to weigh. If the transaction is structured as outlined in the term sheet, there should be no legal liability and no credit or market implications for the City. The legal and disclosure documents for the financing should clearly state that the City's only obligation towards the repayment of the COPs is the application of the moneys it receives from the settlement and/or judgement and in no way is the City obligated to make payments of principal and interest with any other available funds. Another way to protect the City is to ensure that only large sophisticated investors purchase the COPs. If the lender is going to serve as the ultimate investor, the City might want to require an investment letter from the investor. This letter would be required as a condition to purchasing the COPs and would be from the investor to the City. The investor would be required to state that they understood the transaction, the risks and the security structure.

### Conclusion

The proposed plan of finance appears to offer the City an excellent opportunity to fund the Program. As currently outlined, the strategy limits the financial liability of the City from a legal perspective and provides the necessary funds to pursue the remediation. The interest rate on loan is very expensive and above current taxable municipal interest rates. However, we are unaware of any direct comparable transaction, and if the City believes that the lender should be compensated as a return on equity, then the proposed interest rate seems more in line with venture capital returns than loan rates.

The strategy is also predicated on a series of assumptions. If any of these assumptions proves to be false or untrue, it could adversely effect the strategy. If the City can get the legal and financial comfort outlined herein, we believe that the strategy is worth pursuing further. Prior to proceeding, we would recommend that the City receive appropriate guidance from qualified counsel on the following:

- that the City's financing structure is legally valid and authorized;
- that the City's case is likely to succeed;
- that the City's budget and timeframe is reasonable;
- that the loan will be secured only by Program Receipts;

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- that the loan will in no way serve as an impediment to the availability of funds for the environmental clean-up or strategies that would otherwise be pursued in connection with the clean-up.

It is also possible that the City would want assurances as to the security of the loan from the investor. We would prefer a letter from the investor that clearly outlines the investor's understanding of the security and limited nature of any remedies.

Finally and as we mentioned above, we are not a law firm and do not intend to opine on the legal merits of the case or the timing of any judgement or settlement. The purpose of this memo is to help the City review the current proposal. The memo is intended for informational purposes only and is not — nor is it intended — to represent any endorsement of the strategy or approach.

As always, should you have any questions, please do not hesitate to call me at (415) 982-5544.

Sincerely,

PUBLIC FINANCIAL MANAGEMENT, INC.

A handwritten signature in black ink, appearing to read 'R. Alexander Burnett', is written over the company name. The signature is stylized with a large, sweeping 'R' and a long, horizontal stroke extending to the right.

R. Alexander Burnett  
Managing Director

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# TRANSACTION BALANCE AND REQUIRED PAYMENTS

City of Lodi, Loan from Lehman Brothers  
Average LIBOR (5.44 %)

Period Ending	Beginning of Quarter Balance	Quarterly LIBOR Interest Rate	Plus credit spread	Total Quarterly Interest Rate	Quarterly Interest	Accrued Interest	Compounded Interest	Incremental Drawdown	Ending Balance	Cumulative Drawdown	Required Payment to Mature
01/01/2000		0.0000%	0.0000%	0.0000%				2,250,000	2,250,000	2,250,000	2,250,000
04/01/2000	2,250,000	5.4435%	20.0000%	25.4435%	143,118	143,118		1,500,000	3,750,000	3,750,000	4,500,000
07/01/2000	3,750,000	5.4435%	20.0000%	25.4435%	238,632	301,851		1,500,000	5,250,000	5,250,000	6,000,000
10/01/2000	5,250,000	5.4435%	20.0000%	25.4435%	333,945	715,595		1,500,000	6,750,000	6,750,000	7,500,000
01/01/2001	6,750,000	5.4435%	20.0000%	25.4435%	429,359	1,144,955	1,144,955	1,125,000	9,019,955	7,875,000	9,000,000
04/01/2001	9,019,955	5.4435%	20.0000%	25.4435%	573,748	1,718,703		1,125,000	10,144,955	9,000,000	10,125,000
07/01/2001	10,144,955	5.4435%	20.0000%	25.4435%	645,007	2,364,010		1,125,000	11,269,955	10,125,000	11,354,010
10/01/2001	11,269,955	5.4435%	20.0000%	25.4435%	716,887	3,080,877		1,125,000	12,394,955	11,250,000	13,205,877
01/01/2002	12,394,955	5.4435%	20.0000%	25.4435%	788,427	3,869,304	2,724,349	750,000	15,869,304	12,000,000	15,119,304
04/01/2002	15,869,304	5.4435%	20.0000%	25.4435%	1,009,428	4,878,730		750,000	16,818,304	12,750,000	16,878,730
07/01/2002	16,818,304	5.4435%	20.0000%	25.4435%	1,057,133	5,935,863		750,000	17,369,304	13,500,000	18,885,863
10/01/2002	17,369,304	5.4435%	20.0000%	25.4435%	1,104,839	7,040,702		750,000	18,119,304	14,250,000	20,540,702
01/01/2003	18,119,304	5.4435%	20.0000%	25.4435%	1,152,546	8,193,248	4,323,944	375,000	22,818,248	14,825,000	22,443,248
04/01/2003	22,818,248	5.4435%	20.0000%	25.4435%	1,451,440	9,644,688		375,000	23,193,248	15,000,000	24,259,688
07/01/2003	23,193,248	5.4435%	20.0000%	25.4435%	1,476,293	11,119,981		375,000	23,568,248	15,375,000	25,119,981
10/01/2003	23,568,248	5.4435%	20.0000%	25.4435%	1,499,148	12,619,127		375,000	23,943,248	15,750,000	27,994,127
01/01/2004	23,943,248	5.4435%	20.0000%	25.4435%	1,523,000	14,142,127	5,948,870		29,892,127	15,750,000	29,892,127
04/01/2004	29,892,127	5.4435%	20.0000%	25.4435%	1,901,400	18,043,527			29,892,127	15,750,000	31,793,527
07/01/2004	29,892,127	5.4435%	20.0000%	25.4435%	1,901,400	17,944,927			29,892,127	15,750,000	33,694,927
10/01/2004	29,892,127	5.4435%	20.0000%	25.4435%	1,901,400	19,846,327			29,892,127	15,750,000	35,596,327
01/01/2005	29,892,127	5.4435%	20.0000%	25.4435%	1,901,400	21,747,727	7,605,800		37,497,727	15,750,000	37,497,727
04/01/2005	37,497,727	5.4435%	20.0000%	25.4435%	2,385,183	24,132,910			37,497,727	15,750,000	39,882,910
07/01/2005	37,497,727	5.4435%	20.0000%	25.4435%	2,385,183	26,518,093			37,497,727	15,750,000	42,268,093
10/01/2005	37,497,727	5.4435%	20.0000%	25.4435%	2,385,183	28,903,276			37,497,727	15,750,000	44,653,276
01/01/2006	37,497,727	5.4435%	20.0000%	25.4435%	2,385,183	31,288,459	9,540,732		47,038,459	15,750,000	47,038,459
04/01/2006	47,038,459	5.4435%	20.0000%	25.4435%	2,992,057	34,280,516			47,038,459	15,750,000	50,030,516
07/01/2006	47,038,459	5.4435%	20.0000%	25.4435%	2,992,057	37,272,573			47,038,459	15,750,000	53,022,573
10/01/2006	47,038,459	5.4435%	20.0000%	25.4435%	2,992,057	40,264,630			47,038,459	15,750,000	56,014,630
01/01/2007	47,038,459	5.4435%	20.0000%	25.4435%	2,992,057	43,256,687	11,986,226		59,008,687	15,750,000	59,008,687
04/01/2007	59,008,687	5.4435%	20.0000%	25.4435%	3,753,341	47,010,028			59,008,687	15,750,000	62,760,028
07/01/2007	59,008,687	5.4435%	20.0000%	25.4435%	3,753,341	50,763,369			59,008,687	15,750,000	66,513,369
10/01/2007	59,008,687	5.4435%	20.0000%	25.4435%	3,753,341	54,516,710			59,008,687	15,750,000	70,266,710
01/01/2008	59,008,687	5.4435%	20.0000%	25.4435%	3,753,341	58,270,051	15,013,384		74,020,051	15,750,000	74,020,051
04/01/2008	74,020,051	5.4435%	20.0000%	25.4435%	4,709,322	82,978,373			74,020,051	15,750,000	78,728,373
07/01/2008	74,020,051	5.4435%	20.0000%	25.4435%	4,709,322	87,088,695			74,020,051	15,750,000	83,436,695
10/01/2008	74,020,051	5.4435%	20.0000%	25.4435%	4,709,322	91,398,017			74,020,051	15,750,000	88,145,017
01/01/2009	74,020,051	5.4435%	20.0000%	25.4435%	4,709,322	95,707,339	19,833,200		92,853,339	15,750,000	92,853,339
04/01/2009	92,853,339	5.4435%	20.0000%	25.4435%	5,906,284	101,613,623			92,853,339	15,750,000	98,769,623
07/01/2009	92,853,339	5.4435%	20.0000%	25.4435%	5,906,284	107,520,007			92,853,339	15,750,000	104,685,007
10/01/2009	92,853,339	5.4435%	20.0000%	25.4435%	5,906,284	113,426,391			92,853,339	15,750,000	110,592,391
01/01/2010	92,853,339	5.4435%	20.0000%	25.4435%	5,906,284	119,332,775	23,625,136		116,478,475	15,750,000	116,478,475
04/01/2010	116,478,475	5.4435%	20.0000%	25.4435%	7,409,050	126,741,825			116,478,475	15,750,000	123,887,525
07/01/2010	116,478,475	5.4435%	20.0000%	25.4435%	7,409,050	134,150,875			116,478,475	15,750,000	131,296,575
10/01/2010	116,478,475	5.4435%	20.0000%	25.4435%	7,409,050	141,559,925			116,478,475	15,750,000	138,705,625
01/01/2011	116,478,475	5.4435%	20.0000%	25.4435%	7,409,050	148,968,975	29,036,200		146,114,675	15,750,000	146,114,675
Total					130,364,675		130,364,675	15,750,000			

B-DTSC003585

Jan-05-00 08:40am From:SONNENSCHIEIN MATH ROSENTHAL

T-058 P.11/13 F-133

# TRANSACTION BALANCE AND REQUIRED PAYMENTS

City of Lodi, Loan from Lehman Brothers  
Current LIBOR (6.17 %)

Period Ending	Beginning of Quarter Balance	Quarterly LIBOR Interest Rate	Plus credit spread	Total Quarterly Interest Rate	Quarterly Interest	Accrued Interest	Compounded Interest	Incremental Drawdown	Ending Balance	Cumulative Drawdown	Required Payment to Mature
01/01/2000		0.0000%	0.0000%	0.0000%				2,250,000	2,250,000	2,250,000	2,250,000
04/01/2000	2,250,000	6.1700%	20.0000%	26.1700%	147,206	147,206		1,500,000	3,750,000	3,750,000	4,500,000
07/01/2000	3,750,000	6.1700%	20.0000%	26.1700%	246,343	392,549		1,500,000	5,250,000	5,250,000	6,000,000
10/01/2000	5,250,000	6.1700%	20.0000%	26.1700%	343,481	736,030		1,500,000	6,750,000	6,750,000	7,500,000
01/01/2001	6,750,000	6.1700%	20.0000%	26.1700%	441,618	1,177,648	1,177,648	1,125,000	9,052,648	7,875,000	9,000,000
04/01/2001	9,052,648	6.1700%	20.0000%	26.1700%	539,289	1,789,917		1,125,000	10,177,648	9,000,000	10,125,000
07/01/2001	10,177,648	6.1700%	20.0000%	26.1700%	636,872	2,426,789		1,125,000	11,302,648	10,125,000	11,436,789
10/01/2001	11,302,648	6.1700%	20.0000%	26.1700%	739,475	3,176,264		1,125,000	12,427,648	11,250,000	13,300,264
01/01/2002	12,427,648	6.1700%	20.0000%	26.1700%	813,078	3,988,342	2,810,894	750,000	15,988,342	12,000,000	16,238,342
04/01/2002	15,988,342	6.1700%	20.0000%	26.1700%	1,048,037	5,034,379		750,000	16,738,342	12,750,000	17,034,379
07/01/2002	16,738,342	6.1700%	20.0000%	26.1700%	1,095,106	6,129,485		750,000	17,488,342	13,500,000	18,879,485
10/01/2002	17,488,342	6.1700%	20.0000%	26.1700%	1,144,174	7,273,659		750,000	18,238,342	14,250,000	20,773,659
01/01/2003	18,238,342	6.1700%	20.0000%	26.1700%	1,193,243	8,466,902	4,478,680	375,000	23,091,902	14,625,000	22,716,902
04/01/2003	23,091,902	6.1700%	20.0000%	26.1700%	1,510,787	9,977,689		375,000	23,466,902	15,000,000	24,602,689
07/01/2003	23,466,902	6.1700%	20.0000%	26.1700%	1,535,322	11,513,011		375,000	23,841,902	15,375,000	26,513,011
10/01/2003	23,841,902	6.1700%	20.0000%	26.1700%	1,559,858	13,072,867		375,000	24,216,902	15,750,000	28,447,867
01/01/2004	24,216,902	6.1700%	20.0000%	26.1700%	1,584,390	14,667,257	5,190,355		30,407,257	16,750,000	30,407,257
04/01/2004	30,407,257	6.1700%	20.0000%	26.1700%	1,988,394	16,648,651			30,407,257	16,750,000	32,398,651
07/01/2004	30,407,257	6.1700%	20.0000%	26.1700%	1,988,394	18,630,045			30,407,257	16,750,000	34,386,045
10/01/2004	30,407,257	6.1700%	20.0000%	26.1700%	1,988,394	20,626,439			30,407,257	16,750,000	36,376,439
01/01/2005	30,407,257	6.1700%	20.0000%	26.1700%	1,988,394	22,614,833	7,957,578		38,364,833	16,750,000	38,364,833
04/01/2005	38,364,833	6.1700%	20.0000%	26.1700%	2,510,019	24,124,852			38,364,833	16,750,000	40,874,852
07/01/2005	38,364,833	6.1700%	20.0000%	26.1700%	2,510,019	26,634,871			38,364,833	16,750,000	43,384,871
10/01/2005	38,364,833	6.1700%	20.0000%	26.1700%	2,510,019	30,144,890			38,364,833	16,750,000	45,894,890
01/01/2006	38,364,833	6.1700%	20.0000%	26.1700%	2,510,019	32,654,909	10,040,078		48,404,909	16,750,000	48,404,909
04/01/2006	48,404,909	6.1700%	20.0000%	26.1700%	3,165,891	35,821,800			48,404,909	16,750,000	51,571,800
07/01/2006	48,404,909	6.1700%	20.0000%	26.1700%	3,165,891	38,988,691			48,404,909	16,750,000	54,738,691
10/01/2006	48,404,909	6.1700%	20.0000%	26.1700%	3,165,891	42,155,582			48,404,909	16,750,000	57,905,582
01/01/2007	48,404,909	6.1700%	20.0000%	26.1700%	3,165,891	45,322,473	12,887,564		61,072,473	16,750,000	61,072,473
04/01/2007	61,072,473	6.1700%	20.0000%	26.1700%	3,985,666	49,318,139			61,072,473	16,750,000	65,068,139
07/01/2007	61,072,473	6.1700%	20.0000%	26.1700%	3,985,666	53,313,805			61,072,473	16,750,000	69,063,805
10/01/2007	61,072,473	6.1700%	20.0000%	26.1700%	3,985,666	57,309,471			61,072,473	16,750,000	73,059,471
01/01/2008	61,072,473	6.1700%	20.0000%	26.1700%	3,985,666	61,305,137	15,982,864		77,055,137	16,750,000	77,055,137
04/01/2008	77,055,137	6.1700%	20.0000%	26.1700%	5,041,332	66,346,469			77,055,137	16,750,000	82,096,469
07/01/2008	77,055,137	6.1700%	20.0000%	26.1700%	5,041,332	71,387,801			77,055,137	16,750,000	87,137,801
10/01/2008	77,055,137	6.1700%	20.0000%	26.1700%	5,041,332	76,429,133			77,055,137	16,750,000	92,179,133
01/01/2009	77,055,137	6.1700%	20.0000%	26.1700%	5,041,332	81,470,465	20,165,328		97,220,465	16,750,000	97,220,465
04/01/2009	97,220,465	6.1700%	20.0000%	26.1700%	6,260,648	87,731,113			97,220,465	16,750,000	103,581,113
07/01/2009	97,220,465	6.1700%	20.0000%	26.1700%	6,260,648	94,191,761			97,220,465	16,750,000	109,941,761
10/01/2009	97,220,465	6.1700%	20.0000%	26.1700%	6,260,648	100,652,409			97,220,465	16,750,000	116,302,409
01/01/2010	97,220,465	6.1700%	20.0000%	26.1700%	6,260,648	108,913,057	25,442,592		122,683,057	16,750,000	122,683,057
04/01/2010	122,683,057	6.1700%	20.0000%	26.1700%	8,025,230	114,938,287			122,683,057	16,750,000	130,888,287
07/01/2010	122,683,057	6.1700%	20.0000%	26.1700%	8,025,230	122,963,517			122,683,057	16,750,000	138,713,517
10/01/2010	122,683,057	6.1700%	20.0000%	26.1700%	8,025,230	130,988,747			122,683,057	16,750,000	146,738,747
01/01/2011	122,683,057	6.1700%	20.0000%	26.1700%	8,025,230	139,013,977	32,100,820		164,783,977	16,750,000	164,783,977
Total					139,013,977	139,013,977		16,750,000			

B-DTSC003586

Jan-05-00 08:40am From: SONNENSCHEIN NATH ROSENTHAL

T-058 P-12/13 F-133

## TRANSACTION BALANCE AND REQUIRED PAYMENTS

City of Los Angeles, Loan from Lehman Brothers  
Maximum LIBOR (8.63 %)

Period Ending	Beginning of Quarter LIBOR Balance	Quarterly Interest Rate	Plus credit spread	Total Quarterly Interest Rate	Quarterly Interest	Accrued Interest	Contingent Interest	Incremental Drawdown	Ending Balance	Cumulative Drawdown	Required Payment to Maturity
01/01/2000	2,250,000	0.0000%	0.0000%	0.0000%	161,016	161,016		2,250,000	2,250,000	2,250,000	2,250,000
04/01/2000	3,750,000	0.8250%	20.0000%	20.8250%	208,359	429,374		1,500,000	3,750,000	3,750,000	4,500,000
07/01/2000	5,250,000	0.8250%	20.0000%	20.8250%	375,703	805,077		1,500,000	5,250,000	5,250,000	6,000,000
10/01/2000	6,750,000	0.8250%	20.0000%	20.8250%	483,046	1,288,123	1,288,123	1,125,000	6,750,000	6,750,000	7,500,000
01/01/2001	8,163,123	0.8250%	20.0000%	20.8250%	555,795	1,843,918		1,125,000	8,163,123	7,875,000	8,000,000
04/01/2001	10,288,123	0.8250%	20.0000%	20.8250%	730,243	2,574,161		1,125,000	10,288,123	9,000,000	10,125,000
07/01/2001	11,413,123	0.8250%	20.0000%	20.8250%	816,751	3,390,912	3,105,988	1,125,000	11,413,123	10,125,000	11,680,101
10/01/2001	12,538,123	0.8250%	20.0000%	20.8250%	897,259	4,288,171		1,125,000	12,538,123	11,250,000	13,021,852
01/01/2002	16,394,111	0.8250%	20.0000%	20.8250%	1,173,203	5,461,374		750,000	16,394,111	12,000,000	15,644,111
04/01/2002	17,144,111	0.8250%	20.0000%	20.8250%	1,228,876	6,690,250		750,000	17,144,111	12,750,000	17,567,311
07/01/2002	17,894,111	0.8250%	20.0000%	20.8250%	1,280,547	7,970,797	5,014,844	750,000	17,894,111	13,500,000	19,544,189
10/01/2002	18,644,111	0.8250%	20.0000%	20.8250%	1,334,319	9,305,116		375,000	18,644,111	14,250,000	21,574,798
01/01/2003	24,033,958	0.8250%	20.0000%	20.8250%	1,719,929	11,025,045		375,000	24,033,958	15,000,000	23,058,955
04/01/2003	24,783,958	0.8250%	20.0000%	20.8250%	1,740,766	12,765,811		375,000	24,783,958	15,750,000	25,753,884
07/01/2003	25,159,958	0.8250%	20.0000%	20.8250%	1,775,001	14,540,812	7,040,732	375,000	25,159,958	16,375,000	27,879,849
10/01/2003	32,199,887	0.8250%	20.0000%	20.8250%	1,800,437	16,341,250			32,199,887	16,750,000	30,024,250
01/01/2004	32,199,887	0.8250%	20.0000%	20.8250%	2,304,280	18,645,530			32,199,887	16,750,000	32,199,887
04/01/2004	32,199,887	0.8250%	20.0000%	20.8250%	2,304,280	20,949,810			32,199,887	16,750,000	34,503,977
07/01/2004	32,199,887	0.8250%	20.0000%	20.8250%	2,304,280	23,254,090	9,217,160		32,199,887	16,750,000	36,808,287
10/01/2004	41,416,847	0.8250%	20.0000%	20.8250%	2,304,280	25,558,370			41,416,847	16,750,000	39,112,557
01/01/2005	41,416,847	0.8250%	20.0000%	20.8250%	2,893,893	28,452,263			41,416,847	16,750,000	41,416,847
04/01/2005	41,416,847	0.8250%	20.0000%	20.8250%	2,893,893	31,346,156			41,416,847	16,750,000	44,390,740
07/01/2005	41,416,847	0.8250%	20.0000%	20.8250%	2,893,893	34,240,049			41,416,847	16,750,000	47,344,633
10/01/2005	41,416,847	0.8250%	20.0000%	20.8250%	2,893,893	37,133,942	11,855,572		41,416,847	16,750,000	50,308,526
01/01/2006	53,272,419	0.8250%	20.0000%	20.8250%	3,812,307	40,946,249			53,272,419	16,750,000	53,272,419
04/01/2006	53,272,419	0.8250%	20.0000%	20.8250%	3,812,307	44,758,556			53,272,419	16,750,000	57,084,726
07/01/2006	53,272,419	0.8250%	20.0000%	20.8250%	3,812,307	48,570,863			53,272,419	16,750,000	60,887,033
10/01/2006	53,272,419	0.8250%	20.0000%	20.8250%	3,812,307	52,383,170	15,249,228		53,272,419	16,750,000	64,709,378
01/01/2007	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	56,386,750			88,521,847	16,750,000	81,521,847
04/01/2007	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	60,390,330			88,521,847	16,750,000	84,709,378
07/01/2007	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	64,393,910			88,521,847	16,750,000	87,921,847
10/01/2007	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	68,397,490			88,521,847	16,750,000	91,134,387
01/01/2008	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	72,401,070	19,814,320		88,521,847	16,750,000	94,443,187
04/01/2008	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	76,404,650			88,521,847	16,750,000	97,655,281
07/01/2008	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	80,408,230			88,521,847	16,750,000	100,867,375
10/01/2008	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	84,411,810			88,521,847	16,750,000	104,079,469
01/01/2009	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	88,415,390			88,521,847	16,750,000	107,291,563
04/01/2009	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	92,418,970			88,521,847	16,750,000	110,503,657
07/01/2009	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	96,422,550			88,521,847	16,750,000	113,715,751
10/01/2009	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	100,426,130			88,521,847	16,750,000	116,927,845
01/01/2010	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	104,429,710			88,521,847	16,750,000	120,139,939
04/01/2010	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	108,433,290			88,521,847	16,750,000	123,352,033
07/01/2010	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	112,436,870			88,521,847	16,750,000	126,564,127
10/01/2010	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	116,440,450			88,521,847	16,750,000	129,776,221
01/01/2011	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	120,444,030			88,521,847	16,750,000	132,988,315
04/01/2011	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	124,447,610			88,521,847	16,750,000	136,199,409
07/01/2011	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	128,451,190			88,521,847	16,750,000	139,411,503
10/01/2011	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	132,455,170			88,521,847	16,750,000	142,623,597
01/01/2012	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	136,459,150			88,521,847	16,750,000	145,835,691
04/01/2012	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	140,463,130			88,521,847	16,750,000	149,047,785
07/01/2012	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	144,467,110			88,521,847	16,750,000	152,259,879
10/01/2012	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	148,471,090			88,521,847	16,750,000	155,471,973
01/01/2013	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	152,475,070			88,521,847	16,750,000	158,684,067
04/01/2013	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	156,479,050			88,521,847	16,750,000	161,896,161
07/01/2013	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	160,483,030			88,521,847	16,750,000	165,108,255
10/01/2013	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	164,487,010			88,521,847	16,750,000	168,320,349
01/01/2014	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	168,491,000			88,521,847	16,750,000	171,532,443
04/01/2014	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	172,495,000			88,521,847	16,750,000	174,744,537
07/01/2014	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	176,499,000			88,521,847	16,750,000	177,956,631
10/01/2014	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	180,503,000			88,521,847	16,750,000	181,168,725
01/01/2015	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	184,507,000			88,521,847	16,750,000	184,380,819
04/01/2015	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	188,511,000			88,521,847	16,750,000	187,592,913
07/01/2015	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	192,515,000			88,521,847	16,750,000	190,805,007
10/01/2015	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	196,519,000			88,521,847	16,750,000	194,017,101
01/01/2016	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	200,523,000			88,521,847	16,750,000	197,229,195
04/01/2016	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	204,527,000			88,521,847	16,750,000	200,441,289
07/01/2016	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	208,531,000			88,521,847	16,750,000	203,653,383
10/01/2016	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	212,535,000			88,521,847	16,750,000	206,865,477
01/01/2017	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	216,539,000			88,521,847	16,750,000	210,077,571
04/01/2017	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	220,543,000			88,521,847	16,750,000	213,289,665
07/01/2017	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	224,547,000			88,521,847	16,750,000	216,501,759
10/01/2017	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	228,551,000			88,521,847	16,750,000	219,713,853
01/01/2018	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	232,555,000			88,521,847	16,750,000	222,925,947
04/01/2018	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	236,559,000			88,521,847	16,750,000	226,138,041
07/01/2018	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	240,563,000			88,521,847	16,750,000	229,350,135
10/01/2018	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	244,567,000			88,521,847	16,750,000	232,562,229
01/01/2019	88,521,847	0.8250%	20.0000%	20.8250%	4,003,580	248,571,000			88,521,847	16,750,000	235,774,323
04/01/2019	88,521										

FILED

JUN 27 2003

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIF.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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CITY OF LODI,

Plaintiff,

NO. CIV. S-00-2441 ECD JFM

v.

MEMORANDUM AND ORDER

M & P INVESTMENTS, et al.,

Defendants.

---oo0oo---

This matter is before the court on the request for reconsideration by non-party Lehman Brothers, Inc. ("Lehman") under Federal Rule of Civil Procedure 72<sup>1</sup> and Eastern District Local Rule 72-303(c). Lehman challenges the May 13, 2003 order of the Magistrate Judge requiring Lehman to produce certain allegedly privileged documents pursuant to a motion to compel filed by defendant Guild Cleaners, Inc. ("Guild"). For the reasons discussed below, the Magistrate Judge's order of May 13,

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<sup>1</sup> All further references to "Rule" are to the Federal Rules of Civil Procedure.

1 2003 is AFFIRMED and Lehman's request is DENIED.<sup>2</sup>

2 BACKGROUND

3 In late March 2003, defendant Guild served a subpoena issued  
4 out of the Southern District of New York on Lehman seeking  
5 documents pertaining to plaintiff City of Lodi's ("Lodi") scheme  
6 for financing environmental prosecutions of contaminated areas  
7 within the city. (See Ex. B. to Decl. of Michelle C. Hunt ("Hunt  
8 Decl.") in Supp. of Mot. to Stay at 4.) While Lehman produced  
9 approximately 4,630 pages of documents in response to the  
10 subpoena, it withheld certain categories of documents claiming  
11 they are protected by the attorney-client joint interest  
12 privilege. (Lehman's Req. for Recons. at 3.)

13 Guild moved to compel the documents before Magistrate Judge  
14 Moulds on May 7, 2003. Lehman opposed the motion and submitted  
15 the disputed documents for in camera inspection. On May 13,  
16 2003, Magistrate Judge Moulds granted Guild's motion and ordered  
17 Lehman to produce its documents by May 20, 2003.

18 On May 19, 2003, Lehman filed an ex parte application to  
19 stay the Magistrate Judge's order. By minute order dated May 20,  
20 2003, the court granted Lehman's ex parte application and stayed  
21 the May 13, 2003 order pending resolution of this request for  
22 reconsideration.<sup>3</sup>

23 ///

24 ///

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25 <sup>2</sup> Because oral argument will not be of material  
26 assistance, the court orders this matter submitted on the briefs.  
27 See E.D. Cal. Local R. 78-230(h).

28 <sup>3</sup> Lehman's present request for reconsideration was filed  
concurrently with the ex parte application.

## STANDARD

Pursuant to Rule 72(a)<sup>4</sup> and Eastern District Local Rule 72-303(f), a Magistrate Judge's order regarding non-dispositive pretrial motions shall be upheld unless "clearly erroneous or contrary to law." Fed. R. Civ. P. 72(a); E.D. Cal. Local R. 72-303(f); see 28 U.S.C. § 636(b)(1)(A) ("A judge of the court may reconsider any pretrial matter . . . where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law."). Thus, the court reviews Lehman's present request for reconsideration pursuant to Rule 72(a) and Local Rule 72-303(c)<sup>5</sup> applying the standard of Local Rule 72-303(f).

///

<sup>4</sup> Federal Rule of Civil Procedure 72(a) provides in relevant part:

Within 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order; a party may not thereafter assign as error a defect in the magistrate judge's order to which objection was not timely made. The district judge to whom the case is assigned shall consider such objections and shall modify or set aside any portion of the magistrate judge's order found to be clearly erroneous or contrary to law.

Fed. R. Civ. P. 72(a).

<sup>5</sup> Eastern District Local Rule 72-303(c) provides:

A party seeking reconsideration of the Magistrate Judge's ruling shall file an original and one copy with the Clerk and serve on the Magistrate Judge and on all parties a written request for reconsideration by a Judge. Such request shall specifically designate the ruling, or part thereof, objected to and the basis for that objection. This request shall be captioned "Request for Reconsideration by the District Court of Magistrate Judge's Ruling."

E.D. Cal. Local R. 72-303(c).



1 ANALYSIS

2 A. Magistrate Judge's May 13, 2003 Order

3 On May 13, 2003, Magistrate Judge Moulds ruled Lehman did  
4 not share an attorney-client privilege with Lodi's counsel,  
5 Envision Law Group ("Envision"). (Order, filed May 13, 2003 at  
6 1-2.) The Magistrate Judge further found: "To the extent the  
7 documents [in Lehman's possession] reveal attorney-client  
8 privileged communication between the City of Lodi and its  
9 counsel, the court finds that there has been a waiver of the  
10 privilege." (*Id.* at 2.) Consistent with the finding that Lehman  
11 did not share an attorney-client relationship with Envision, the  
12 Magistrate Judge concluded, "the joint interest doctrine is  
13 inapplicable, given the relationship between the City of Lodi and  
14 Lehman Brothers, Inc." (*Id.*) Based on these findings, the  
15 Magistrate Judge granted Guild's motion and ordered the  
16 production of Lehman's withheld documents. (*Id.* at 2.)

17 Lehman now challenges the May 3, 2003 order on two grounds.  
18 First, Lehman argues the Magistrate Judge erroneously concluded  
19 the documents were relevant to Phase I liability issues.  
20 (Lehman's Req. for Recons. at 3.) Second, Lehman contends the  
21 Magistrate Judge failed to properly apply the attorney-client  
22 joint interest privilege. (*Id.*) The court addresses each  
23 argument below.

24 B. Relevance

25 Under Rule 26(b)(1), parties may obtain discovery regarding  
26 any matter, not privileged, that is relevant to the claim. Fed.  
27 R. Civ. P. 26(b)(1). To be relevant, evidence must have a  
28 tendency to make the existence of any fact of consequence more or

1 less probable than without the evidence. Fed. R. Evid. 401.

2 Lehman argues the Magistrate Judge erroneously concluded  
3 Guild's subpoena sought documents within the scope of discovery  
4 permitted in Phase I. Lehman challenges the Magistrate Judge's  
5 finding by attacking Guild's argument supporting relevance.  
6 (Lehman's Req. for Recons. at 7.) According to Lehman, it is  
7 Guild's position that the relevance of the documents turn on  
8 whether Lodi properly maintained, inspected, and repaired its  
9 municipal and water sewer systems. (Id.) Lehman then asserts  
10 that this theory of relevance fails because the financing program  
11 between Lehman and Lodi "could only be expended on certain  
12 limited program costs, such as enforcement activities, not on  
13 sewer maintenance." (Id. at 8.)

14 Both the Ninth Circuit in Fireman's Fund and this court have  
15 previously noted the relevance and impact that Lodi's enforcement  
16 strategy has played in this case. See Fireman's Fund Ins. Co. v.  
17 City of Lodi, 302 F.3d 928, 953 (9th Cir. 2002); (Mem. and Order,  
18 filed Mar. 31, 2003, at 9-10.) From the outset of this  
19 litigation the central issue has been identifying and properly  
20 allocating responsibility for the City's groundwater  
21 contamination. Lodi's series of transactions with Lehman to  
22 "finance a portion of the costs of its environmental abatement  
23 program"<sup>6</sup> for the City's groundwater contamination would seem  
24 similarly relevant. Because Lehman apparently has a contingent  
25 financial interest in Lodi's recovery in this litigation, any  
26 non-privileged documents in Lehman's possession related to the

27

28 <sup>6</sup> (Lehman's Req. for Recons. at 7.)

1 series of transactions between Lehman and Lodi are relevant and  
2 discoverable. Fed. R. Evid. 401.

3 C. Privilege

4 "The party asserting an evidentiary privilege has the burden  
5 to demonstrate that the privilege applies to the information in  
6 question." Tornay v. United States, 840 F.2d 1424, 1426 (9th  
7 Cir. 1988). To support its claim of privilege, Lehman has  
8 provided this court with the subject documents for in camera  
9 inspection. However, Lehman has not submitted a privilege log  
10 under Rule 45(d)(2) that provides "a description of the nature of  
11 the documents, communications, or things not produced that is  
12 sufficient to enable the demanding party to contest the claim."  
13 Fed. R. Civ. P. 45(d)(2). In its moving papers Lehman provides  
14 only a brief summary of the fourteen categories of documents that  
15 it has withheld, but does not distinguish its legal arguments as  
16 applied to the various categories of documents. Consequently,  
17 Lehman's burden of demonstrating that the privilege applies can  
18 only be determined by an analysis of the withheld documents  
19 viewed in toto. Because Lehman relies upon a derivative claim of  
20 the attorney-client privilege, the present determination turns on  
21 the nature of the relationship between Lehman and Lodi.

22 Lehman contends that it has withheld discovery of certain  
23 documents because they "constitute or reflect communications with  
24 the City or its attorneys to the underlying litigation" and that  
25 the "joint interest" privilege (also called the joint defense or  
26 common interest privilege) attaches to its communications  
27 "because Lehman and Lodi have substantially similar interests in  
28 the litigation at issue." (Lehman's Req. for Recons. at 9, 11.)

1 Because Lehman's claim of common interest privilege presupposes  
2 the existence of an underlying attorney-client privilege, the  
3 court first examines the nature of the communications and  
4 relationship between Lehman and Lodi. See In re Grand Jury  
5 Subpoenas, 902 F.2d 244, 249 (4th Cir. 1990).

6 1. The Lehman-Lodi Communications and Relationship

7 Lehman's communication with Lodi is comprised generally of  
8 correspondence that provides updates on the status of this  
9 litigation, summaries and charts of the amounts spent on  
10 litigation, and proposed timelines. The documents were prepared  
11 by either (1) representatives at Lehman, (2) in-house counsel and  
12 outside counsel for Lehman, or (3) counsel for Lodi. The  
13 recipients of the communications generally included both Lehman  
14 representatives and outside counsel for Lehman.<sup>7</sup>

15 The communications between Lehman and Lodi were made in  
16 furtherance of their business deal that funds this litigation. A  
17 review of these communications does not reveal any indicia of  
18 legal advice or representation or an attorney-client

19 relationship. Indeed, the only relationship between Lehman and  
20 Lodi is based upon an arms-length business transaction of funding  
21 in return for profit. This relationship is not privileged and  
22 the subject documents, if relevant, are discoverable.

23 Assuming Lehman and Lodi each generated their own internal  
24 documents that would be protected by the attorney-client  
25 privilege, the privileged nature of such documents was waived

26

27 <sup>7</sup> In one instance, there is a letter generated by the  
28 city attorney for Lodi and sent to California Department of Toxic  
Substances that was copied to Lehman.

1 upon disclosure to one another because, "[t]he voluntary delivery  
2 of a privileged communication by a holder of the privilege to  
3 someone not a party to the privilege waives the privilege."  
4 Clady v. Los Angeles County, 770 F.2d 1421, 1433 (9th Cir. 1985).  
5 Further, as discussed below, the common interest privilege does  
6 not apply because it "does not create an independent privilege,  
7 but depends upon a proper showing of the other elements of the  
8 attorney-client privilege." Katz v. AT&T Corp., 191 F.R.D. 433,  
9 437-438 (E.D. Pa. 2000). Thus, Lehman fails to demonstrate that  
10 it shares an attorney-client relationship with Lodi or, as  
11 discussed below, that any cognizable privilege attaches to the  
12 subject communications.

## 13 2. Common Interest Privilege

14 The common interest privilege operates as an exception to  
15 the general rule that the attorney-client privilege is waived  
16 upon disclosure of privileged information with a third party.  
17 Katz, 191 F.R.D. at 437-38; see In re Grand Jury Subpoenas, 902  
18 F.2d at 249. To establish the common interest privilege, "the  
19 party asserting the privilege must show that (1) the  
20 communications were made in the course of a joint defense effort,  
21 (2) the statements were designed to further the joint defense  
22 effort, and (3) the privilege has not been waived." United  
23 States ex rel. Burroughs v. DeNardi Corp., 167 F.R.D. 680, 686  
24 (S.D. Cal. 1996).

25 Lehman does not attempt to prove the required elements for  
26 the common interest privilege. Instead, Lehman relies upon  
27 Hewlett-Packard Co. v. Bausch & Lomb, Inc., 115 F.R.D. 308 (N.D.  
28 Cal. 1987) and In re Mortgage & Realty Trust, 212 B.R. 649

1 (Rankr. C.D. Cal. 1997) in claiming the common interest  
2 privilege.

3 a. Hewlett-Packard v. Bausch & Lomb

4 Lehman contends Hewlett-Packard requires application of the  
5 common interest privilege in this case because Lodi, like Bausch  
6 & Lomb, had a "duty to disclose all information about potential  
7 litigation to Lehman in order to give Lehman the tools to decide  
8 whether to invest in the litigation." (Lehman's Req. for Recons.  
9 at 9.) The court disagrees. In Hewlett-Packard, Bausch & Lomb  
10 had a legal duty to disclose an opinion letter which analyzed the  
11 threat of litigation to GEC in the midst of a potential business  
12 deal. Hewlett-Packard, 115 F.R.D. at 308. Significantly, the  
13 disclosure dealt specifically with the very asset that GEC sought  
14 to purchase. Id. In contrast, while Lodi may have a contractual  
15 duty to report to Lehman after their agreement was consummated,  
16 such reports are wholly dissimilar to the material disclosures  
17 that were required of Bausch and Lomb. This radical difference  
18 undermines Lehman's reliance on Hewlett-Packard. Unlike Hewlett-  
19 Packard and contrary to Lehman's contention, the communications  
20 between Lehman and Lodi were not "tools to decide whether to  
21 invest in the litigation" because the communications all involve  
22 matters occurring after Lehman invested in the litigation.  
23 Hewlett-Packard simply does not support Lehman's claim of common  
24 interest privilege.

25 Lehman's position is further distinguished from Hewlett-  
26 Packard by the distinct policy considerations underlying that

27  
28 \* (Lehman Req. for Recons. at 9.)



1 decision which are inapplicable to the present case. In Hewlett-  
2 Packard, the court was persuaded to uphold the attorney-client  
3 privilege because it hoped to encourage the negotiated sales of  
4 businesses that involve assets protected by intellectual property  
5 law. See id. at 311. Here, sound public policy runs counter to  
6 Lehman's claim of privilege. The business transaction between  
7 Lehman and Lodi to fund environmental litigation for profit could  
8 undermine the efficient and effective remediation because the  
9 investment bank does not seek to remediate, instead, it seeks to  
10 recover its investment and make an extraordinary profit. To the  
11 extent Lehman's financial arrangement with Lodi could conflict  
12 with the goal of cleaning up environmental contamination, sound  
13 policy counsels against encouraging such arrangements.

14 b. In re Mortgage & Realty Trust

15 Lehman also relies upon In re Mortgage & Realty Trust to  
16 claim the common interest privilege applies. In In re Mortgage &  
17 Realty Trust, the bankruptcy court applied the common interest  
18 privilege to prevent the disclosure of a telephone conversation.  
19 The bankruptcy court found the common interest privilege  
20 applicable because of the shared legal duty "to maximize the  
21 debtor's estate" between a debtor in possession and the committee  
22 of creditors. In re Mortgage & Realty Trust, 212 B.R. at 653.

23 In this case, Lehman and Lodi have no shared duty that is  
24 analogous to the bankruptcy context discussed in In re Mortgage &  
25 Realty Trust.<sup>9</sup> Other than the distinct obligations created by  
26

27 <sup>9</sup> Lehman also analogizes its position with Lodi to  
28 "information exchanged between defense counsel and defendant's  
(continued...)

1 their contractual relationship. Lehman and Lodi share no common  
2 legal duty with one another. Accordingly, In re Mortgage &  
3 Realty does not support application of the common interest  
4 privilege.

5           3.   Application of the Common Interest Privilege to  
6           this Case

7           As discussed above, neither Hewlett-Packard nor In re  
8 Mortgage & Realty Trust support Lehman's claim of privilege.  
9 Lehman's only remaining basis for asserting a common interest is  
10 that "both parties possess a major financial incentive in  
11 prevailing in the lawsuit and seek to recover money." (Lehman's  
12 Req. for Recons. at 9.) Such incentives do not support Lehman's  
13 claim of common interest privilege because the common interest  
14 must be "identical, not similar, and be legal, not solely  
15 commercial." Katz, 191 F.R.D. at 437 (emphasis added) (quoting  
16 In re Regents of the Univ. of Cal., 101 F.3d 1386, 1390 (Fed.  
17 Cir. 1996)); see Union Carbide Corp. v. Dow Chemical Co., 619 F.  
18 Supp. 1036, 1047 (D. Del. 1985); Duplan Corp. v. Dearing  
19 Milliken, Inc., 397 F. Supp. 1146, 1172 (D.S.C. 1974). Because  
20 Lehman's sole interest in this litigation is profit, such an  
21 interest cannot form the basis for the common interest privilege.

22           <sup>9</sup>(...continued)  
23 insurer." (Lehman's Req. for Recons. at 11.) Lehman's analogy  
24 is unpersuasive. The origin of an insurer's role in litigation  
25 arises from a duty to defend its insured that is imposed by law.  
26 Here, Lehman is an investment bank with no legal duty to  
27 participate or defend Lodi in this litigation. Further, an  
28 insurer exercises its contractual right to direct the course of  
litigation on behalf of its insured. In contrast, Lehman "does  
not have any role in litigation strategy." (Id. at 2.)  
Accordingly, Lehman's analogy to insurance context does not  
support application of the common interest privilege.

1 Katz, 191 F.R.D. at 437. Accordingly, the Magistrate Judge's  
2 order of May 13, 2003 is not clearly erroneous or contrary to  
3 law.

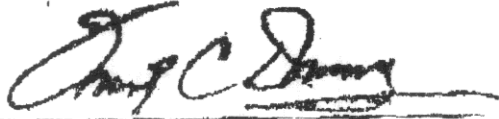
4 **CONCLUSION**

5 For the reasons set forth above, the court makes the  
6 following orders:

- 7 1. The stay imposed by the court's May 20, 2003 minute  
8 order stay is REMOVED;  
9 2. The May 13, 2003 order of Magistrate Judge Moulds  
10 regarding non-party Lehman is AFFIRMED, including the  
11 documents in "item 14" submitted by Lehman for in  
12 camera review;  
13 3. Lehman's request for reconsideration is DENIED.

14 IT IS SO ORDERED.

15 DATED: June 27, 2003

16   
17 FRANK C. DAMRELL, Jr.  
18 UNITED STATES DISTRICT JUDGE  
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**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, NOVEMBER 3, 1999  
7:00 P.M.**

**1. ROLL CALL**

Present: Council Members – Hitchcock, Mann, Nakanishi, Pennino and Land (Mayor)

Absent: Council Members – None

Also Present: City Manager Flynn, Deputy City Manager Keeter, Public Works Director Prima, Community Development Director Bartlam, Finance Director McAthie, Electric Utility Director Vallow, Human Resources Director Narloch, City Attorney Hays and Deputy City Clerk Taylor

**2. INVOCATION**

The invocation was given by Pastor Bruce Logue, Ham Lane Church of Christ.

**3. PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Perry Wilcox representing Troop 474 of the Girl Scouts Tierra del Oro Council.

**4. AWARDS / PROCLAMATIONS / PRESENTATIONS**

- a) Mayor Land and Community Improvement Manager Wood presented the November Community Improvement Award to Antonio Murguia, property owner of Carniceria California Deli, located at 620 South Central Avenue, Lodi.
  - b) Laura Heinitz, member of the Lodi Arts Commission, updated the City Council on the many accomplishments and activities of the Commission. Mrs. Heinitz invited the public to get involved in specialty arts classes, ballroom dancing, or one of many upcoming performances in the theater. Those interested were encouraged to contact the Square at 333-6782 for tickets and information.
  - c) Captain Adams with the Lodi Police Department introduced Audrey Lake of the Dayton-Hudson Corporation who informed the Council about its "Partnership Appreciation Awards" program. Detectives Reba Ridino and Roger Butterfield were both recognized for their partnership with Target and Mervyn's Loss Prevention personnel in investigating crimes that effect its industry. Further, Ms. Lake presented Captain Adams and Captain Mauch with a check for \$1,050 to help in the purchase of specialized equipment to assist in the fight against these types of crimes.
  - d) Ken Nieland made a presentation to the City Council regarding the upcoming Sandhill Crane Festival. November 5-7, 1999 marks the Festival's third year, and those attending will experience the addition of an art exhibition, a kick-off reception and an increased amount of exhibitors, educational materials, and information. Also shared was the fact that one individual crane, tagged and recorded as returning to Lodi annually for several years, has been given the name "Lodi".
-

5. CONSENT CALENDAR

In accordance with report and recommendation of the City Manager, Council, on motion of Council Member Nakanishi, Hitchcock second, unanimously approved the following items hereinafter set forth **except those otherwise noted:**

- a) Claims were approved in the amount of \$3,579,953.25.
- b) The minutes of October 19, 1999 (Special Meeting) and October 20, 1999 (Regular Meeting) were approved as written.
- c) Adopted Resolution No. 99-166 awarding the bid for the purchase of ten portable radios and six mobile radios for the Police Partners Program to the low bidder, Lagorio Communications, of Manteca, in the amount of \$10,759.45.
- d) Adopted Resolution No. 99-167 awarding the bid for the purchase of fifteen wood utility poles to the low bidder, North Pacific Lumber, of Portland, Oregon, in the amount of \$6,028.61. **(Due to a conflict of interest, Council Member Pennino abstained from discussion and voting in this matter.)**
- e) Adopted Resolution No. 99-168 awarding the bid for the purchase of 15,000 feet of #750 600-volt XHHW aluminum conductor to the low bidder, Graybar Electric, of Sacramento, in the amount of \$20,180.01. **(Due to a conflict of interest, Council Member Pennino abstained from discussion and voting in this matter.)**
- f) Adopted Resolution No. 99-169 authorizing the purchase of a Green Machine Model 414RS Sidewalk Sweeper for the Street Division of the Public Works Department from Western Traction Company, of Union City, in the amount of \$27,799.50.
- g) Adopted Resolution No. 99-170 awarding the contract for Parks and Recreation Department Restroom Accessibility Retrofit, 125 North Stockton Street, to Advantage Construction, of Stockton, in the amount of \$38,401 and appropriated funds in accordance with staff's recommendation.
- h) Accepted the improvements under the "Lodi Lake Park Storage Building, 1101 West Turner Road" contract and directed the City Engineer to file a Notice of Completion with the County Recorder's office.
- i) Adopted Resolution No. 99-171 authorizing the City Manager to submit an application for State grant funds for park improvements at Lodi Lake Beach.
- j) Adopted Resolution No. 99-172 authorizing the City Manager to submit fiscal year 2000/01 Environmental Enhancement and Mitigation (EEM) Program grant applications for the following landscaping projects: **(Due to a conflict of interest, Council Member Pennino abstained from discussion and voting in this matter.)**
  - Kettleman Lane Median Landscaping (\$105,000)  
(from Hutchins Street to Ham Lane)  
The median is being constructed as part of the Kettleman Lane (Highway 12) and Crescent Avenue Traffic Signal/Median Project
  - Hutchins Street Median Landscaping (\$135,000)  
(from Harney to Kettleman Lane)  
This gateway to Lodi is beautifully landscaped for a short stretch of median. The Public Works Department seeks to extend the landscaping to Kettleman Lane.



- Lower Sacramento Road Median Landscaping (\$250,000) (from Turner Road to Harney Lane). Although the original estimated cost is \$620,000 for landscaping, the EEMP's maximum award is \$250,000.
  - k) Adopted Resolution No. 99-173 approving a Public Benefits Program grant in the amount of \$91,135.00 for the Light Emitting Diodes (LED) Traffic Safety Signal Conversion; authorized the City Manager to execute an agreement with Energy Masters International, Inc. to implement the project; and appropriated funds in accordance with staff recommendation. **(Due to a conflict of interest, Council Member Pennino abstained from discussion and voting in this matter.)**
  - l) Adopted Resolution No. 99-174 approving the Lodi Residential Air Duct Testing & Attic Insulation Rebate, a demand-side management component of the City of Lodi Public Benefits Program, for a total of \$175,000. **(Due to a conflict of interest, Council Member Pennino abstained from discussion and voting in this matter.)**
  - m) Adopted Resolution No. 99-175 approving a Public Benefits Program grant in the amount of \$7,215 for Nationwide Wire & Brush Manufacturing, Inc. as part of its energy conservation effort. **(Due to a conflict of interest, Council Member Pennino abstained from discussion and voting in this matter.)**
  - n) Adopted Resolution No. 99-176 approving a Public Benefits Program grant, not to exceed \$5,000, to the Salvation Army of Lodi for a low-income household demographics study. **(Due to a conflict of interest, Council Member Pennino abstained from discussion and voting in this matter.)**
  - o) Agenda item #E-15 entitled, "Transfer of funds to the Northern California Power Agency (NCPA) Geothermal Bond Escrow Account" was removed from the Consent Calendar and discussed and acted upon following approval of the Consent Calendar.
  - p) Adopted Resolution No. 99-178 approving the transfer of control of cable television franchise from MediaOne Group, Inc. to AT&T Corp. **(Due to a conflict of interest, Council Member Mann abstained from discussion and voting in this matter.)**
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6. ACTION ON ITEMS REMOVED FROM THE CONSENT CALENDAR

- a) Agenda item #E-15 entitled, "Transfer of funds to the Northern California Power Agency (NCPA) Geothermal Bond Escrow Account".

Electric Utility Director Vallow reported that the Northern California Power Agency (NCPA) and its members concluded a major project debt restructuring this year which resulted in significant reductions of yearly debt service payments. Subsequently, NCPA has continued to pursue additional opportunities to enhance members' competitive positions.

Recently, NCPA and its Financial Advisor developed a financial instrument designed to result in a net savings to NCPA Geothermal Project participants. This instrument would establish a Geothermal Bond Escrow Account for a portion of outstanding Geothermal Project debt drawing a higher rate of return than the Local Area Investment Fund 6.35% on October 20, 1999. The total additional return for the City of Lodi would be approximately \$222K over the period January 1, 2000 through July 1, 2010. Subsequently, and in accordance with the NCPA Geothermal Project Third Phase Agreement and NCPA Commission rules, establishment of the Geothermal Bond Escrow Account was approved at the October 28, 1999 NCPA Commission Meeting.

The City of Lodi's escrow account funding share is \$2,300,000 based upon Geothermal Project share and anticipated interest rate. Due to the amount required, Fiscal Year 1999-2000 Operating Revenues will not be adequate to accommodate the requirement. Therefore, it was recommended that source of funds be as follows: \$1,000,000 from City of Lodi - NCPA General Operating Reserve and \$1,300,000 from the Electric Utility Rate Stabilization Reserve 162.

The above actions are compatible with the Electric Utility Department's Competition Transition Plan.

Following discussion, the City Council, on motion of Nakanishi, Hitchcock second, adopted Resolution No. 99-177 approving the transfer of funds to the NCPA Geothermal Bond Escrow Account in an amount not to exceed \$2,300,000. **(Due to a conflict of interest, Council Member Pennino abstained from discussion and voting in this matter.)**

## 7. PUBLIC HEARINGS

- a) Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Land called for the Public Hearing to consider unmet transit needs.

Public Works Director Prima reported that a prior public hearing was held on Thursday, October 21, 1999, at 2:00 p.m. at the Hutchins Street Square Senior Center. No unmet transit needs for the City of Lodi were identified at the public hearing.

These public hearings are an annual requirement of the Transportation Development Act regulations. The regulations require the San Joaquin Council of Governments (SJCOC) to determine if there are any unmet transit needs that are reasonable to meet. Because of the recent transit service improvements, we do not expect SJCOC to find any unmet transit needs in Lodi.

### Hearing Opened to the Public

1. J. W. Baker, 1825 S. Church Street, Lodi, commented that the Dial-a-Ride buses are busy every day, the service is bad, the waiting time is unreasonable, and even with a reservation to a destination, calling for a ride home becomes a demand response call which is terribly frustrating. Further, he stated it appears some buses are carrying only one passenger, and he believes Dial-a-Ride was and should remain a service tailored to seniors and the disabled. Mr. Baker did comment that the drivers are great, but management of the program appears to be messed up.

Transportation Manager Tobar commented that FTA requires a reservations program, and that these customers will have priority over demand response calls. The number of customers utilizing the program, established in 1997, has increased greatly in recent months, and the majority of these customers are students and adults needing transportation to and from school and work. Prior to 1997, the entire system operated on demand response. Those currently participating in the reservation program enjoy the reliability and convenience of door to door service and the cost.

Council Member Pennino expressed concern that the purpose in creating the Dial-a-Ride program was to provide transportation services to our senior citizens and the disabled, and noted he was not aware that the program was no longer focused on those needs. Following discussion, Council concurred with Mr. Pennino's recommendation that the Dial-A-Ride program be reviewed and brought back to Council for discussion at a future meeting.

Public Portion of Hearing Closed

**ACTION:**

No Council action was required regarding this matter.

8. **COMMUNICATIONS (CITY CLERK)**

- a) On recommendation of the City's Risk Manager and/or the City's contract administrator, Insurance Consulting Associates, Inc. (ICA), the City Council, on motion of Council Member Pennino, Land second, unanimously rejected the following claim:

1. Steve Escarsega, date of loss 9/19/99

- b) Deputy City Clerk Taylor read the following ABC Licenses:

1. Wine & Roses Country Inn, 2505 West Turner Road, Lodi, On-Sale General, Person to Person Transfer
2. Centro Mart, Lakewood Apple Marketplace, 1320 West Lockeford Street, Lodi, Off-Sale Beer and Wine, Premise to Premise Transfer

- c) The City Council, on motion of Pennino, Hitchcock second, unanimously directed the City Clerk to post for the following expiring terms on various boards and commissions:

**Lodi Senior Citizens Commission**

Trella Arieda	Term to expire December 31, 1999
Terri Whitmire	Term to expire December 31, 1999

**San Joaquin County Mosquito and Vector Control District**

Jack Fiori	Term to expire December 31, 1999
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9. **REGULAR CALENDAR**

- a) Agenda item #H-1 entitled, "Salary range adjustments for General Services positions".

Human Resources Analyst II Evans informed the City Council that during contract negotiations with the General Services bargaining unit, it was agreed that a salary survey would be conducted for six classifications within the unit: Customer Services Supervisor, Parks Project Coordinator, Purchasing Assistant, Sr. Storekeeper/Buyer, Supervising Administrative Clerk, and Support Services Supervisor.

After completion of this survey, City staff met with the General Services unit representative to meet and confer over the impact of these changes on these six classifications. As a result of these discussions, and the recommendations of the salary consultant, it is our recommendation that the following changes be made to the City's compensation plan effective July 1, 1999:

Parks Project Coordinator

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
\$3,220.97	\$3,382.01	\$3,551.15	\$3,728.71	\$3,915.10

This new range represents a 15.9% increase over the old range.

Purchasing Assistant

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
\$2,044.77	\$2,147.00	\$2,254.36	\$2,367.08	\$2,485.43

This new range represents a 7.6% increase over the old range.

Support Services Supervisor

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
\$2,404.60	\$2,524.83	\$2,651.08	\$2,783.63	\$2,922.81

This new range represents an 11.3% decrease from the old range.

Customer Services Supervisor	No change is recommended
Sr. Storekeeper/Buyer	No change is recommended
Supervising Administrative Clerk	No change is recommended

The impact of these changes would be an increase in the salary ranges for Parks Project Coordinator and Purchasing Assistant, and a decrease in the range for Support Services Supervisor. The effect of these changes on the employees occupying these positions would be a 5% increase for the Parks Project Coordinator and Purchasing Assistant, and a freezing, or "Y rating", of the salary for Support Services Supervisor.

Following discussion, the City Council, on motion of Pennino, Hitchcock second, unanimously adopted Resolution No. 99-179 approving the implementation of salary range adjustments for Parks Project Coordinator, Purchasing Assistant and Support Services Supervisor.

- b) Agenda item #H-2 entitled, "Authorize execution of appropriate documents establishing financing program for Environmental Remediation Program relative to groundwater contamination".

City Attorney Hays reminded the City Council that about two and one-half years ago, the City entered into an agreement with the California Department of Toxic Substances Control, which placed the City in the position of lead agency relative to cleaning up the PCE/TCE groundwater contamination in the City. The decision to become the lead agency was undertaken by the City Council after evaluating alternatives and their affect on the community generally. The Council at that time rejected a program that would have resulted in very significant water rate increases for all water rate payers in the community. Instead, the City began funding the environmental remediation activities from reserves in the water fund. The activities to date have principally been of a legal nature and have resulted in the City expending significant dollars. This office some time ago began exploring the possibility of integrating a financing undertaking with the legal strategies that the City wished to pursue in order to accomplish the necessary cleanup program. The City Manager directed that if a program could be developed which did not put at risk funds other than those to be recovered through our environmental remediation activities, then it was a program he would be willing to support as well.

What is before the City Council is a recommendation to move forward with a financing which incorporates an elaborate budget developed to provide funding for our legal program as we have developed it, as well as our technical remediation program, with the revenue stream being only those dollars that are recovered under our environmental remediation program. We have coordinated the program with the Envision Law Group agreement so that payments under that agreement, as presented, track the budget and the financing. No other City revenues are pledged under this program to repay the holders of Certificates of Participation other than program recoveries.

While the financing concept is unique, the actual financing transaction is virtually identical to the Certificate of Participation transaction which the City recently undertook involving the City's electrical system. The effect of Council's approval of the financing is to provide dollars to proceed with our environmental enforcement and remediation activities relative to the PCE/TCE contamination once the financing is completely in place. At that point in time the City will cease to be spending moneys from the water fund.

Council will note that the transaction has moved up from \$15.75 million to \$16 million. This increase reflects the time that has elapsed since we first began this process along with increased costs incurred by Lehman Brothers in developing the legal structure of the transaction. Those costs, as the others, are covered by the transaction now that it has increased to \$16 million.

Alex Burnett, Financial Advisor with PFM, provided a brief presentation regarding the proposed documents, and reflected on the four main factors involved in going forward with this program: the flow of funds and security structure; limitations on non-cash settlements associated with the loan; costs associated with the program, which are clearly outlined and certain fees that are limited but no contingent; unwinding provisions governed in the documents.

Council Member Hitchcock expressed her concerns with moving forward, and asked for clarification regarding the documents provided, requesting that Mr. Burnett provide a detailed review of the key points contained in the proposed program documents. City Attorney Hays reminded Council that certain contents and strategies within the documents are confidential and must remain so for the success of this project, noting that the final report of Mr. Burnett was in his verbal presentation to Council this evening.

Council Member Pennino voiced his concern in retaining the confidentiality of these documents and the City's strategies, and stated he has read the information provided and feels the program will be successful in the City's financial recovery efforts. Further, Mr. Pennino requested that the City Manager review and approve all documents and invoices generated during the life of the program.

Council Member Nakanishi stated that when he ran for the City Council Member position, he was aware of the MERLO topic and was sure if elected, this might be the most important item he would be asked to support or reject. Mr. Nakanishi fully supports this program and would like to see the City Council move forward.

Mayor Land stated that the City Council and staff have worked on the MERLO project for a few years and at this time have few options left. Since insurance companies will not disclose the existence of policies which would help to pay for the contamination cleanup, this program is necessary in helping the city move forward.

Mayor Pro Tempore Mann reminded Council that this item has been exhaustively discussed over the past two years, and that while he cannot recite all the details, he relies on the City Manager, City Attorney and the professionals they have consulted regarding this proposal. Mr. Mann expressed he is comfortable with the safety of City funds provided with this proposal, has done his homework, and will do his best to make a decision best for those who have placed him in this position of trust. The City has done due diligence for as long as needed. It's time to make a decision and move forward now.

Following discussion, the City Council, on motion of Mann, Land second, adopted Resolution No. 99-180 entitled, "A Resolution Of The City Council Of The City Of Lodi Relating To Variable Rate Certificates Of Participation (Environmental Abatement Program), Approving The Forms Of And Authorizing The Execution And Delivery Of A Program Receipts Sale And Repurchase Agreement, A Trust Agreement, A Certificate Purchase Contract, A Placement Agent Agreement And A Professional Services Agreement, And Authorizing Certain Other Related Actions In Connection Therewith" by the following vote:

Ayes: Council Members - Mann, Nakanishi, Pennino and Land (Mayor)  
Noes: Council Members - Hitchcock  
Absent: Council Members - None  
Abstain: Council Members - None

10. RECESS

Mayor Land called for a ten-minute recess, and the City Council meeting reconvened at approximately 9:25 p.m.

11. REGULAR CALENDAR (continued)

- a) Agenda item #H-3 entitled, "Ordinance establishing Chapter 2.34, Administrative Procedures, of the Lodi Municipal Code".

City Attorney Hays reported that in January of 1999, the California Court of Appeals, 4<sup>th</sup> District, Division II decided the case of Haas v. County of San Bernardino. In February of that same year, the Court ordered the Opinion to be published thereby establishing a case with precedential value. The subject matter of the Haas case was centered around how the County of San Bernardino selected its hearing officers to handle administrative hearings. Council will remember that when the administrative matter which was undertaken against M&P Investments and David Mustin, you heard counsel for David Mustin make an argument based upon the Haas case that our administrative procedure was flawed.

Out of an abundance of caution, we have undertaken to develop a comprehensive Administrative Procedures Chapter for the Lodi Municipal Code. This Chapter is developed in part to answer the Haas decision and to put us in a position should that decision remain in place to be able to absolutely argue against any claim that the selection of hearing officers in our administrative matters is not in compliance with State or Federal due process requirements.

In closing, it should be noted that the Haas case has moved up the judicial ladder and will be considered by the California Supreme Court. The expected outcome at this time is that the California Supreme Court will return to the rather long-standing law in the State of California that it is necessary in order to challenge a hearing officer for the challenging party to demonstrate an actual bias in order to have a hearing officer removed.

Following discussion, the City Council, on motion of Mann, Pennino second, unanimously introduced Ordinance No. 1683 entitled, "An Ordinance Of The City Council Of The City Of Lodi Amending Title 2 - Administration And Personnel Of The Lodi Municipal Code By Adding Chapter 2.34, Relating To Administrative Procedures".



- b) Agenda item #H-4 entitled, "Ordinance repealing and reenacting Chapter 8.24, Comprehensive Environmental Response and Liability, of the Lodi Municipal Code".

City Attorney Hays presented the following report.

In August of 1997, the City adopted Ordinance No. 1650, which established Chapter 8.24 of the Lodi Municipal Code. This Chapter, known as the Comprehensive Environmental Response and Liability Ordinance (MERLO), is part of the City's environmental program relative to the PCE/TCE contamination of the groundwater within the City of Lodi. We have faced and repulsed several challenges to that Ordinance by insurance companies who provide coverage to potentially responsible parties who we have been focusing on relative to our enforcement activities. Through that process we have developed an understanding of revisions to the Ordinance, which can be undertaken to make the Ordinance even more effective that it already is. Additionally, we have adjusted the Ordinance to recognize the potential for instituting a financing program, which can be utilized to fund remediation activities by the City. Placing this improved MERLO in the City Code will assist us further in the City's remediation activities.

Following additional discussion, the City Council, on motion of Pennino, Mann second, unanimously introduced Ordinance No. 1684 entitled, "An Ordinance Of The City Council Of The City Of Lodi Repealing And Reenacting Lodi Municipal Code Title 8, Health And Safety, Chapter 8.24 Relating To Comprehensive Municipal Environmental Response And Liability".

12. MEETING OF THE LODI FINANCING CORPORATION

Mayor Land adjourned the City Council meeting at approximately 9:25 p.m. to a meeting of the Lodi Financing Corporation.

Deputy City Clerk Taylor called the meeting of the Lodi Financing Corporation to order, and City Attorney Hays provided the following report.

The reason for the establishment of the Lodi Finance Corporation is really quite simple. In order to perform a financing transaction as is proposed, the transaction has to be bilateral, which simply means it takes two parties to enter into the transaction that would result in the issuance of Certificates of Participation as proposed under the action taken by the City Council. The Lodi Financing Corporation represents that second party. The Lodi Financing Corporation was created in order to have that second party. It also is created in order to make very clear that the transaction is between parties who are solely involved in the environmental abatement program with a revenue stream being dedicated to that program consisting of recoveries from that particular program. This makes it very clear that no other City revenues are involved.

City Attorney Hays indicated that the City Clerk calls the meeting to order since the Corporation is basically meeting for the first time and undertakes its initial organizational activities prior to conducting any business. The Council was provided with various documents which indicate the existence of the Corporation and the initial designation of Directors as undertaken by the incorporator. Those documents consisting of the Certificate designating the Directors of the Corporation and the Articles of Incorporation were presented to the Council for information only.

The first action item on the agenda is the election of officers, which will be conducted by the Deputy City Clerk. It was staff's recommendation that Council follow the pattern that the City has established relative to this type of corporation and elect the Mayor and the Mayor Pro Tempore as the President and Vice-President of the Corporation. The Treasurer and Secretary were recommended to be the Finance Director and the City Clerk respectively.

Once the officers of the Corporation are elected, the remainder of the meeting will be conducted by the President of the Corporation. Item No. D on the agenda is the adoption of the Bylaws of the Corporation and designation of the annual meeting as it is contained in the Bylaws. The Council was provided a copy of the Bylaws of the Lodi Financing Corporation as well as a copy of the Bylaws of the Lodi Public Improvement Corporation. The Lodi Public Improvement Corporation was the entity that the City partnered with in completing the recent financing transaction involving the City's Electric Utility. The purpose for presenting both is to point out that the Bylaws for both Corporations are very nearly identical.

Item No. E on the agenda is another housekeeping chore to be undertaken by the Board. It is simply the adoption of Resolution No. LFC-3 that appoints the position of City Attorney as Counsel to the Corporation. This particular appointment is consistent with how the City has handled its other Corporation.

Item No. F on the agenda is a request to take minute action. What is being asked of the Board here is simply to authorize staff to make the necessary filings to deal with the tax exempt status of the Corporation and to request a refund of fees that were initially paid at the time of incorporation. Again this is merely a housekeeping measure and action by the Board would allow staff to undertake the appropriate actions.

Item No. G. is the action item which results in the approvals given by the City Council to become effective. By adopting the documents that are presented to the Board, the transaction becomes the bilateral transaction that we have spoken of and can then be fully implemented.

Following discussion, the following action was taken:

- On motion of Director Pennino, Mann second, the Directors unanimously adopted Resolution No. LFC-1 entitled, "A Resolution Electing Officers Of The Lodi Financing Corporation";
- On motion of Director Nakanishi, Land second, the Directors unanimously adopted Resolution No. LFC-2 entitled, "A Resolution Adopting Bylaws And Designating Time And Place Of Annual Meeting Of The Lodi Financing Corporation";
- On motion of Director Pennino, Mann second, the Directors unanimously adopted Resolution No. LFC-3 entitled, "A Resolution Appointing Counsel For The Lodi Financing Corporation"; and
- On motion of Director Nakanishi, Pennino second, the Directors unanimously adopted Resolution No. LFC-4 entitled, "A Resolution Of The Board Of Directors Of The Lodi Financing Corporation Relating To Variable Rate Certificates Of Participation (Environmental Abatement Program), Approving The Forms Of And Authorizing The Execution And Delivery Of A Program Receipts Sale And Repurchase Agreement, A Trust Agreement, A Certificate Purchase Contract And A Placement Agent Agreement And Authorizing Certain Other Related Actions And Certain Other Documents In Connection Therewith".

There being no further business to come before the Corporation, President Land adjourned the meeting of the Lodi Financing Corporation at approximately 9:35 p.m. and reconvened the meeting of the City Council.

13. ORDINANCES

- a) Ordinance No. 1681 entitled, "An Ordinance Of The Lodi City Council Amending The Official District Map Of The City Of Lodi And Thereby Rezoning The Parcels Located At 15567 Lower Sacramento Road (APN #027-050-05) To PD, Planned Development No. 34" having been introduced at a regular meeting of the Lodi City Council held October 20, 1999 was brought up for passage on motion of Council Member Pennino, Land second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Hitchcock, Mann, Nakanishi, Pennino and Land (Mayor)  
Noes: Council Members – None  
Absent: Council Members – None

- b) Ordinance No. 1682 entitled, "An Ordinance Of The Lodi City Council Amending The Official District Map Of The City Of Lodi And Thereby Rezoning The Parcels Located At 5215 And 5333 East Kettleman Lane (APN #049-070-25 And 049-070-24) To U-H, Unclassified Holding District" having been introduced at a regular meeting of the Lodi City Council held October 20, 1999 was brought up for passage on motion of Council Member Land, Nakanishi second. Second reading of the ordinance was omitted after reading by title, and the ordinance was then adopted and ordered to print by the following vote:

Ayes: Council Members – Hitchcock, Mann, Nakanishi, Pennino and Land (Mayor)  
Noes: Council Members – None  
Absent: Council Members – None

14. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- a) Robert Johnson, 1311 Midvale Road, Lodi, expressed his disappointment in this evening's actions and discussion regarding the ground contamination. Knowing it was a difficult decision, the public hearing regarding the finance package was one of the fastest he had seen, and the staff reports and questions raised by Council can generate comments and questions from the public. He further noted that Council Member Hitchcock raised several interesting questions and expressed concern that drafts and final reports were not received by all Council and that no documents were apparently made available to the public for review.

City Attorney Hays advised Mr. Johnson that the public documents would be provided to him if he so desired, and that he would be glad to go over any questions or concerns he might have.

15. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- a) Mayor Land expressed his sincere gratitude to the four members of the Lodi Fire Department who went into the foothills recently to assist fellow firefighters in putting out the wildfires in that area. They certainly represented this community well, and should be commended for their service above and beyond. Further, Mayor Land shared with those present a letter received from the second grade class at St. Anne's School thanking the City and the Year 2000 Steering Committee for their gift of activity books for the entire class.
- b) City Manager Flynn wished Assistant to the City Manager Cynthia Haynes a happy birthday, which she celebrates on Friday, November 5<sup>th</sup>.

16. CLOSED SESSION

Mayor Land adjourned the City Council meeting to a Closed Session to discuss the following matters:

- a) Conference with labor negotiator, Human Resources Director Joanne Narloch, regarding Lodi Police Dispatchers' Association (LPDA) pursuant to Government Code §54957.6
- b) Conference with labor negotiator, City Manager Dixon Flynn, regarding Mid-Management employees pursuant to Government Code §54957.6

17. RETURN TO OPEN SESSION / DISCLOSURE OF ACTION

The City Council meeting reconvened at approximately 11:48 p.m., at which time Mayor Land reported that no final action was taken regarding the closed session items.

18. ADJOURNMENT

There being no further business to come before the City Council, the meeting was adjourned at approximately 11:50 p.m.

ATTEST:

Jacqueline L. Taylor  
Deputy City Clerk

**LODI CITY COUNCIL  
REGULAR CITY COUNCIL MEETING  
CARNEGIE FORUM, 305 WEST PINE STREET  
WEDNESDAY, OCTOBER 17, 2001**

**C-1     CALL TO ORDER / ROLL CALL**

The City Council Closed Session meeting of October 17, 2001 was called to order by Mayor Nakanishi at 6:17 p.m.

Present: Council Members – Hitchcock (arrived at 6:20 p.m.), Howard, Land, Pennino and Mayor Nakanishi

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

**C-2     ANNOUNCEMENT OF CLOSED SESSION**

- a) Negotiate modification(s) to land lease/leases for White Slough Water Pollution Control Facility Property; negotiating parties are Bechthold-Kirschenman Farms; Government Code §54956.8

**C-3     ADJOURN TO CLOSED SESSION**

At 6:17 p.m., Mayor Nakanishi adjourned the meeting to a Closed Session to discuss the above matter.

**C-4     RETURN TO OPEN SESSION / DISCLOSURE OF ACTION**

At 7:00 p.m., Mayor Nakanishi reconvened the City Council meeting, and City Attorney Hays disclosed that there was no reportable action taken with regard to item C-2(a).

**A.     CALL TO ORDER / ROLL CALL**

The Regular City Council meeting of October 17, 2001 was called to order by Mayor Nakanishi at 7:00 p.m.

Present: Council Members – Hitchcock, Howard, Land, Pennino and Mayor Nakanishi

Absent: Council Members – None

Also Present: City Manager Flynn, City Attorney Hays, and City Clerk Blackston

**B.     INVOCATION**

The invocation was given by Pastor Steve Jarret, New Hope Community Church.

**C.     PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance was led by Mayor Nakanishi.

**D.     AWARDS / PROCLAMATIONS / PRESENTATIONS**

D-1     Awards – None

D-2 (a) Mayor Nakanishi presented a proclamation to Doris McCaughna, volunteer with the Women's Center, proclaiming the month of October 2001 as "Domestic Violence Awareness Month" in the City of Lodi.

Ms. McCaughna reported that the Lodi Women's Center has been operating in the Lodi community for over ten years, providing assistance to women, children, and families in crisis. Programs include counseling for victims of domestic violence and sexual assault, legal advocacy, assistance with temporary restraining orders, ongoing support groups for victims of domestic violence, referrals for job preparation, housing, food, and clothing. In addition, they offer VINE (Violence Is Not Excusable) House, a safe shelter for domestic violence victims and their children. On behalf of the Women's Center, Ms. McCaughna thanked Judge Baysinger and Judge Warner for their ability to leave a lasting impression on domestic violence offenders, their compassion for victims, and their tenacity for justice

in these cases. She also thanked Chief Adams and the Lodi Police Department for their continuing efforts in the fight against domestic violence. Ms. McCaughna reported that Lois Borchardt, a founding member of the Women's Center, died in August. She was referred to as "Mother Theresa" by staff and was the organizing force that kept the volunteers working as a successful team. Ms. Borchardt was named 2001 Woman of the Year by Senator Machado for her work in the community.

- D-3 (a) Sweta Patel, member of the Greater Lodi Area Youth Commission, acknowledged the Teen of the Month, Sarah Hoff from Lodi High School. Ms. Hoff introduced her parents, Dr. Jim and Mary Hoff.

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E. CONSENT CALENDAR

In accordance with the report and recommendation of the City Manager, Council, on motion of Council Member Land, Pennino second, unanimously approved the following items hereinafter set forth **except those otherwise noted**:

- E-1 Claims were approved in the amount of \$8,500,363.29.
- E-2 The minutes of August 29, 2001 (Special Town Hall Meeting), September 19, 2001 (Special Meeting), and October 2, 2001 (Shirtsleeve Session) were approved as written.
- E-3 "Receive PCE/TCE Report of Expenditures in the amount of \$506,196.00" was **removed from the Consent Calendar and discussed and acted upon under the Regular Calendar**.
- E-4 Adopted Resolution No. 2001-237 approving the Annual Investment Policy and Internal Control Guidelines.
- E-5 Approved the specifications for ten 55-foot Class 1, twenty 45-foot Class 3, and ten 35-foot Class 3 wood utility poles and authorized advertisement for bids.
- E-6 Approved the specifications for twenty-five post-top (globe) luminaires and authorized advertisement for bids.
- E-7 Adopted Resolution No. 2001-238 awarding the contract for White Slough Water Pollution Control Facility Chlorine Residual Analyzer Replacements to Borges & Mahoney Company, of Vallejo, in the amount of \$15,700; and appropriated \$20,000 for the project.
- E-8 "Adopt resolution rejecting lowest bid for Armory Park Bleacher Improvements, 333 N. Washington Street, and award bid to next lowest responsible bidder, Benton Fence and Drilling, of Galt (\$83,570.00)" was **pulled from the agenda pursuant to staff's request**.
- E-9 "Contract Change Orders for Elm Street Improvements, Church Street to Sacramento Street; and appropriate additional funds" was **removed from the Consent Calendar and discussed and acted upon under the Regular Calendar**.
- E-10 Took the following actions with regard to the Arcadia Place development:
  - Approved the final map for Arcadia Place, Tract No. 3147, and directed the City Manager and City Clerk to execute the improvement agreement and map on behalf of the City; and
  - Appropriated funds for applicable fee credits.
- E-11 Took the following actions with regard to the Tienda Place, Unit No. 1, development:
  - Approved the final map for Tienda Place, Tract No. 3141, and directed the City Manager and City Clerk to execute the improvement agreement and map on behalf of the City;
  - Authorized the City Manager to execute an addendum to the improvement agreement, without further Council action, for reimbursement for excess width street pavement improvements in Kettleman Lane; and
  - Appropriated funds for applicable fee credits.



- E-12 Directed the City Manager and City Clerk to execute the improvement agreement for Century Meadows One, Unit No. 2, Tract No. 2786, Master Storm Drainage Facilities, on behalf of the City and appropriated funds for the reimbursement.
- E-13 Adopted Resolution No. 2001-239 approving the application to apply for grant funds from the Roberti-Z'Berg-Harris Urban Open Space and Recreation Program under the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 for improvements to Lodi Lake Park central (southwest) area and authorized the City Manager to sign the local match certificate form and waiver request form.
- E-14 Adopted Resolution No. 2001-240 authorizing the City Manager to provide funding in the amount of \$50,000 to fund the Public Benefits Program Grant – Vineyard Shopping Center Demand-side Management Project.
- E-15 Adopted Resolution No. 2001-241 authorizing the City Manager to provide funding in the amount of \$15,909.60 to fund the Public Benefits Program Grant – Wine Country Plaza Demand-side Management Project.

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F. COMMENTS BY THE PUBLIC ON NON-AGENDA ITEMS

- Georgianna Reichelt, President of the Land Utilization Alliance, stated that those she represents have grave concerns about Lodi's Redevelopment Plan. She stated that she was surprised at Mayor Pro Tempore Pennino's reaction to her comments at the last Council meeting, considering his involvement with the Council of Governments, which is supportive of regional government. She stated that when regional tax dollars are spent, anyone in the region has a right to address it, including Manteca. She expressed concern that the City did not spend funds on improving the water and sewer pipes on the east side, which allowed for the area to be considered blighted and placed in the Redevelopment Area. Ms. Reichelt stated that she has checked with other cities and found that they put their water and sewer funds in an enterprise account governed by GASB. Cities cannot charge in excess of what it costs to deliver the services and maintenance, otherwise it falls under Proposition 218. Ms. Reichelt suggested that the City review where it is spending its enterprise funds, as it was her understanding that some of the water funds have been going toward Police, Fire, and other services that have no correlation with water or sewer. She reported that the City of Modesto was successfully sued by 'Howard Jarvis and Paul Gann' and the Modesto Taxpayers Association over this issue.

Council Member Land confirmed that Lodi has Enterprise Funds for water, wastewater, and electric. There is an in-lieu transfer fee that goes into the fund. He asked the City Attorney for verification that the transfer of funds from the Enterprise Fund to the General Fund is lawful.

City Attorney Hays replied in the affirmative and stated that there has never been a lawsuit to date that has successfully challenged the in-lieu transfer.

Ms. Reichelt stated that she would obtain and provide a copy of the lawsuit to Council at the next meeting.

Mr. Hays indicated that Ms. Reichelt may be speaking about a Superior Court case, in which the decision would not set a precedence necessitating cities to react.

Mayor Nakanishi asked Mr. Hays to provide Council with an executive summary on the issue.

G. PUBLIC HEARINGS

- G-1 Notice thereof having been published according to law, an affidavit of which publication is on file in the office of the City Clerk, Mayor Nakanishi called for the continued Public Hearing to consider updating Development Impact Fees for water, wastewater collection, storm drainage, streets, police, fire, parks and recreation, and general City facilities, and amending Title 15, Chapter 15.64 of the Lodi Municipal Code.

Mayor Pro Tempore Pennino reminded staff that this item was continued for the purpose of amending the documents to include a section on Public Art.

Public Works Director Prima read Section 11, Public Art Program, which was attached to the staff report for this item (filed).

Council Member Land noted that he was not present at the last Council meeting; however, he had reviewed the tape and agreed with Council's decision to add the Public Art element into the Development Impact Fee update report.

Hearing Opened to the Public

None.

Public Portion of Hearing Closed

MOTION:

Council Member Land made a motion, Pennino second, to:

- Adopt Resolution No. 2001-242 entitled, "A Resolution Of The Lodi City Council Amending Development Impact Mitigation Fees For All Developments Within The City Of Lodi"; and
- Introduce Ordinance No. 1706 entitled, "An Ordinance Of The City Council Of The City Of Lodi Amending Title 15 – Buildings And Construction, Chapter 15.64 – Development Impact Mitigation Fees By Repealing And Reenacting Section 15.64.040 – 'Payment Of Fees,' And Section 15.64.050 – 'Adoption Of Study, Capital Improvement Program And Fees' To The Lodi Municipal Code Relating To Development Impact Fees."

DISCUSSION:

Discussion ensued regarding the appropriateness of adding language in the resolution to reflect the addition of the Public Art Program. Council expressed concurrence to add the language.

MOTION – AMENDED:

Council Member Land amended his motion, Pennino second, to further include under Item 1 in Resolution No. 2001-242 the addition of Section 11, Public Art Program.

DISCUSSION:

Council Member Howard reported that she previously voted against allocation of funds from the Development Impact Fees for the Public Art Program. She confirmed that her position has not changed; however, she would vote in favor of the overall Development Impact Fee update as she is in agreement with all other elements of the recommendation, and also due to the extensive study and investigation by staff and interested parties that went into the matter. She encouraged staff and Council to continue to look at how the Public Art Program is impacting the community and ensure that it has a positive effect on funds.

VOTE:

The above motion carried by a unanimous vote.

H. COMMUNICATIONS

- H-1 Claims filed against the City of Lodi – None
- H-2 Reports: Boards/Commissions/Task Forces/Committees – None
- H-3 Appointments – None
- H-4 Miscellaneous
  - a) Received the cumulative Monthly Protocol Account Summary through September 30, 2001.

I. REGULAR CALENDAR

(NOTE: Items under the Regular Calendar were heard and discussed out of order.)

City Manager Flynn recommended that Item I-1 be moved to the end of the Regular Calendar.

- I-2 "Authorize the City Manager to execute a contract with ACRT, Inc. for the Urban Forest Management Plan and software; and appropriate funds for the contract"

Public Works Director Prima reported that under the proposed Urban Forest Management Plan, ACRT, Inc., which has its west coast office in Lodi, would evaluate City trees, measure their size, log an assessment of their health and safety issues, and locate them on the City mapping system so that staff would have the ability to access the data and review the maintenance history of the trees. Benefits of this Plan include allowing maintenance staff to do planning for budgetary purposes and tracking tree maintenance and history. The street tree portion of the program will cost \$44,000 and the park tree portion will cost \$10,000. These amounts include software, training, and contingencies for additional trees, as the exact number is unknown at this time.

Council Member Land recalled that this matter was listed on the Consent Calendar of a previous Council agenda. He appreciated that it was removed and brought back for a full presentation to Council at a Shirtsleeve Session. He expressed full agreement for including park trees in the Plan and asked that when the inventory is complete, a presentation be given to Council at a Shirtsleeve Session on the benefits of the Urban Forest Management Plan and software.

MOTION:

Council Member Land made a motion, Hitchcock second, to authorize the City Manager to execute a contract with ACRT, Inc. for the Urban Forest Management Plan and software; appropriate the necessary funds for the contract; and further direct staff to include park trees in the inventory and management plan

DISCUSSION:

Council Member Hitchcock hoped that the next time Council revisits this issue it would include a Heritage tree ordinance to protect the area's mature oaks.

VOTE:

The above motion carried by a unanimous vote.

- I-3 "Reaffirm \$40,000 appropriation for the All Veterans' Plaza Project"

City Manager Flynn summarized past Council actions related to funding the All Veterans' Plaza Project. The Council originally appropriated \$25,000 for design work. In response to a subsequent request, an additional \$15,000 was appropriated for design work, bringing the total to \$40,000. The committee later reported to Council that the cost of the project would be \$450,000. The committee working on the project are comprised mainly of laypersons unfamiliar with standard business practices of the City. As a result, there has been confusion on the part of the committee members about what was actually

appropriated for the project. They believe a total of \$490,000 was appropriated by Council for the All Veterans' Plaza Project. It is staff's recommendation that the Council reaffirm \$490,000 for the project, which has been set aside for this purpose.

Cynthia Haynes, Assistant to the City Manager and President of the Lodi Area Veterans' Plaza Foundation, provided an update on the project. Construction of the All Veterans' Plaza has begun and completion is anticipated by February 2002. The Foundation's fund development plan accomplishments include:

- Fundraising brochure;
- Corporate sponsorship packet that has been mailed to more than 100 corporations across the nation;
- Web site;
- Plaza logo;
- Billboard signage;
- Speakers bureau; and
- Information booth for participation in community events.

Ms. Haynes reported that the Foundation is currently working with a local developer and two local banking institutions to build a house with community labor. All of the proceeds from the sale of the house would go toward the Veterans' Plaza. To date the Foundation has raised more than \$25,000 in cash and \$30,000 in in-kind contributions. The Foundation's goal is to make payments back to the City on a biannual basis, beginning December 2001. Ms. Haynes introduced Pastor Steve Jarret, the Foundation Treasurer.

Council Member Hitchcock asked Mr. Flynn what amount he believed the Foundation expected to pay back the City, to which he replied \$490,000.

Council Member Howard inquired whether the City "currently" put aside \$490,000, or "originally" put it aside.

Mr. Flynn replied that when the Council approved the original design work, \$25,000 was appropriated and charged to the project. When the Council amended that to add \$15,000, that was also appropriated and added to the project. When the Council agreed that the project could go forward for \$450,000, that amount was appropriated and placed in the project account. The account is now funded to \$490,000.

Addressing Pastor Jarret, Council Member Land pointed out that the City Manager believed the Foundation's repayment would be \$490,000; however, based on a letter from Pastor Jarret it is the Foundation's belief that the \$40,000 for design work was a contribution from the City and the loan amount was \$450,000.

Pastor Jarret reminded Council that the individuals tasked with working on this project are veterans who do not have the expertise of City staff. He reviewed past Council action related to funding the Veterans' Plaza and stated that \$40,000 was for the design only, while the project amount was \$450,000. The Foundation has agreed to pay back the \$450,000 project cost.

In response to Council Member Land, Mr. Flynn confirmed that the \$40,000 for the design work was spent out of last year's budget, and \$450,000 has been included in the Capital Account portion of the 2001-2003 budget.

Council Member Land spoke in favor of designating the \$40,000 as a City contribution for the design work, and specifying \$450,000 as a loan to the All Veterans' Plaza and Foundation, which would generate funds for repayment.

MOTION:

Council Member Land made a motion, Nakanishi second, to reaffirm that the \$40,000 appropriation was a contribution from the City for the design of the All Veterans' Plaza project, and the \$450,000 project cost appropriation was a loan to be repaid by the All Military Veteran's Plaza Foundation.

DISCUSSION:

Council Member Hitchcock recalled the Council initially approved \$25,000 as a City contribution, but all subsequent amounts, including the \$15,000, were considered to be a loan.

In response to Mayor Pro Tempore Pennino, Finance Director McAthie confirmed the funding for the project is in the Capital budget. She added that it was also documented in the goals, and stated that the \$450,000 was in the prior year.

Mayor Pro Tempore Pennino clearly recalled that the project was not to exceed \$450,000. The budget breakdown included design and all levels of the project for a total of \$450,000. He clarified that he would not be voting against the veterans, but rather, he would be voting on the principle of the budget.

Mayor Nakanishi expressed strong support for designating the \$40,000 as a contribution from the City, particularly at this time of difficulty in the country. The money should be dedicated to all veterans, present and future.

VOTE:

The above motion carried by the following vote:

Ayes: Council Members – Hitchcock, Land and Mayor Nakanishi

Noes: Council Members – Howard and Pennino

Absent: Council Members – None

E-9 "Contract Change Orders for Elm Street Improvements, Church Street to Sacramento Street; and appropriate additional funds"

Public Works Director Prima explained that due to staff's haste in completing the Elm Street project, a large error was made in the cost estimate. In addition to Elm Street, the project included replacement of curb, gutter, sidewalk, paving, and tree wells along Church Street from south of Elm Street, north up to the alley. The alley was rebuilt between Church and School Streets. Replacement of the sewer line was done from Church Street to Sacramento Street. Water lines and storm drains were replaced on Elm Street, as well as the concrete, surface work, decorative lighting, and trees. It was anticipated to have the theater project developer use its contractor to do the bulk of the street work; however, the City was to furnish a significant amount of equipment including street furniture, street lights, some of the signal poles, controller, and trees, as well as to conduct soils testing and do signage work. The materials and services totaled nearly \$301,000. This amount was not included in the original appropriation that staff requested in March. The contract amount that was signed with the developers to do the installation and reconstruction work was slightly over \$1.1 million. Only \$1.2 million was appropriated for the project. The project was estimated by the developer based only on concept plans, as the actual plans and specifications were developed as the project moved forward. Change Orders for work done by the developer's contractor have amounted to \$200,000. This equals approximately 17% of the original contract amount. Staff is confident that they have received a competitive price for the work.

Mayor Pro Tempore Pennino noted that \$493,000 was appropriated in the Capital budget, and inquired as to what projects will not be accomplished, or be delayed, due to this error.

Mr. Prima replied that all projects will be accomplished and did not anticipate delays as a result of this issue. He stated that \$100,000 in gas tax would be applied toward this project, which after being subtracted from the requested \$285,000, results in only a \$185,000 difference. In addition, staff anticipates a significant amount of funding by working with the Council of Governments and the State Transportation Improvement Program (STIP).

Council Member Hitchcock commented that such an error has not happened during the three years she has served on the Council, implying that it is pardonable, and stated that she would have voted in favor of the project even if the initial cost had been what is indicated today.

Council Member Land stated that when this project was originally brought before Council he felt that it should have gone through the standard bid process, and believed if it had been done this situation would not have occurred. He expressed disappointment that Council was not informed earlier about the Change Orders, and asked for an explanation of the anticipated \$40,000 in Change Orders that are yet to come.

Senior Civil Engineer Charlie Swimley explained that some Change Order requests were received after the staff report was completed for this item. They are related to surface improvements, such as streetlight footings.

City Manager Flynn noted that Mr. Prima has done an outstanding job for the City and has excellent staff, several of which are new and are learning to deal with different contractors and issues. He reminded Council that they had expressed the need for expediency on this project and several others.

In reply to Council Member Howard, Mr. Prima again stated that he did not believe that any other projects would be stopped or delayed due to this issue.

Council Member Hitchcock and Mayor Pro Tempore Pennino complimented Public Works staff for their excellent work and specifically for the outstanding results on Elm Street.

**MOTION / VOTE:**

The City Council, on motion of Council Member Hitchcock, Land second, unanimously received for information Contract Change Orders 1 through 9, and authorized appropriation of \$493,000.00 additional Capital funds to cover the remaining, anticipated construction costs associated with the Elm Street Improvements, Church Street to Sacramento Street, project.

I-1 "Review of PCE/TCE Financing"

City Attorney Hays read the staff report he submitted for this item (filed).

**PUBLIC COMMENTS:**

- In response to questions by Eileen St. Yves relative to PCE/TCE related expenditures, the following information was reported.

City Manager Flynn stated that proceeds from the Certificate of Participation were \$5.281 million, and the water fund contributed \$6.3 million. Referencing documents under Item E-3, Mr. Flynn summarized the expenditures made from July through August 2001. He confirmed that a \$1 million judgement has been received by the City.

Finance Director McAthie reported that the \$1 million judgement was applied toward the original water fund expenditure.

Ms. St. Yves reported that the San Joaquin County Rental Property Association sued the City of Stockton for \$13.5 million and they paid only \$270,000 in legal fees. She asked whether taxpayer money goes into the water fund. She stated that local businesses are paying legal fees to defend themselves against the City, and inquired why the City is suing them to rectify something that they had nothing to do with in the first place.

Mr. Hays warned that the questioning is beyond the scope of the matter described under this agenda item.

Ms. St. Yves asked what the City is hoping to get in return for its expenditures.

Mr. Hays replied that he expects full recovery for the dollars spent as well as the cost of cleanup in the community.

Council Member Hitchcock asked if there have been recent draws from Lehman Brothers.

City Manager Flynn distributed a handwritten document to Council (filed).

Ms. McAthie explained that the document distributed by Mr. Flynn was prepared in response to Ms. Hitchcock's request regarding how much money would have to be paid in interest on the amount of money that has already been drawn down. Ms. McAthie stated it would be the London Interbank Offered Rate (LIBOR) plus 20%. The LIBOR rate fluctuates; however, the cap is 30%. By calculating each quarter at the 30% maximum amount, the interest owed on the \$9.2 million that has been drawn down amounts to \$2.2 million.

In reply to Council Member Hitchcock, Accounting Manager Ruby Paiste reported that as of August, \$5.8 million has been spent out of the \$9.2 million.

Discussion ensued regarding the practice of drawing down large sums of money on a quarterly basis, while paying 23% interest on the sum for the period of time pending its disbursement.

Mayor Pro Tempore Pennino encouraged the City Manager to play a more active role in leveraging funds, and cautiously suggested the possibility of using the City's reserves. He noted, however, that the City's General Fund reserve is now \$23 million, the lowest it has been in many years.

Addressing the public, Mayor Nakanishi noted that the PCE/TCE issue began in 1997. Details about the litigation cannot be discussed, as it could cause harm to the City's case and potentially be quite costly. Council has been provided information that is favorable. He asked for support toward completing the process, because to stop now would clearly not be in the best interest of the City.

Council Member Howard disclosed that she met with the owner of Guild Cleaners and his attorney Stephen Meyer this afternoon, and followed all Brown Act laws while doing so.

Council Member Hitchcock also disclosed that she met with Mr. Alquist and Mr. Meyer. She commented that other individuals have expressed concerns to her similar to what Ms. St. Yves addressed today. She asked whether more money will need to be borrowed.

Mr. Hay reported that the borrowing cap was \$16 million. The amount that was available for the City to use in its enforcement activity was \$15 million. He projected that it would not be necessary to borrow beyond that.

In response to questions by Council Member Hitchcock related to the loan agreement, Mr. Hays reported that if no money were available to move forward, the loan agreement simply remains inactive. The City would not be under obligation to repay it or move forward. He stated that the agreement is at its end when the final draw is made. Mr. Hays believed that as long as the City had money available from the agreement, it would be obligated to continue to proceed until the money was exhausted. Once the money was exhausted, the City would be under no more obligation to move forward, and it would not force the payment of the loan to come due. The lender has first call on any recoveries. Mr. Hays read paragraph four, entitled Permitted Deductions, from page 11 of the Program Receipts Sale and Repurchase Agreement (filed). He stated that this relates to the negotiated amount that goes toward the water fund. The payments then go into the program receipts account, which is transferred to the trustee. Mr. Hays replied in the affirmative to Ms. Hitchcock's inquiry regarding whether it would pay the borrowed amount plus interest, and the City would then be able to get whatever is in addition to that for cleanup.

MOTION/ VOTE:

No Council action was required in this matter.



J. ORDINANCES

None.

K. COMMENTS BY CITY COUNCIL MEMBERS ON NON-AGENDA ITEMS

- Mayor Nakanishi announced that a Town Hall meeting on the subject of water issues is scheduled for next week. Public Works Director Prima reviewed the names of the guest speakers.
- Council Member Hitchcock thanked the Council and staff for their willingness to bring forward the PCE/TCE financing issue. She asked that the Council receive (via the Consent Calendar) a quarterly report from the Finance Department summarizing the status including what is owed and what the accrued interest is.
- Council Member Land explained that he was unable to attend the last Council meeting, as he was out of town at a business meeting for Farmers and Merchants Bank and the California Bankers Association. At this meeting nine presentations were given regarding community development programs and services. These presentations included: 1) Lodi House, 2) the RENEW project, of which 13 pieces of property on the east side have been identified to rehabilitate or build new homes for affordable housing, and 3) a grant program for first time home buyers.

Council Member Land also commented on the following issues:

1. He thanked the Council for participating last Sunday at the Lodi House fundraiser.
  2. Recognized the City Clerk for staffing the City Council booth at the Celebration on Central Event.
  3. Announced that Hutchins Street Square is hosting a Halloween haunted house on October 31.
  4. He attended the NCPA conference, at which updates were given regarding power market issues. They also warned of lobbyist efforts to take away local control.
  5. He plans to attend the League of California Cities Mayor and Council Members Institute being held January 9 to 11 and encouraged all other Council Members to attend as well.
- Council Member Howard pointed out that Council failed to vote on Item E-3.

E-3 "Receive PCE/TCE Report of Expenditures in the amount of \$506,196.00"

MOTION / VOTE:

The City Council, on motion of Council Member Hitchcock, Pennino second, unanimously received the PCE/TCE Report of Expenditures in the amount of \$506,196.00 from July through August 2001.

L. COMMENTS BY THE CITY MANAGER ON NON-AGENDA ITEMS

- City Manager Flynn announced that Roger Houston, Chief Building Inspector, will be retiring on November 29.  
  
Mayor Pro Tempore Pennino noted that Information Systems Manager Stan Helmle will be leaving employment with the City, and he asked City Manager Flynn to prepare a letter on behalf of the Council thanking him for his hard work and dedication.

*Continued October 17, 2001*

**M. ADJOURNMENT**

There being no further business to come before the City Council, the meeting was adjourned at 8:55 p.m.

ATTEST:

Susan J. Blackston  
City Clerk



# CITY OF LODI

## COUNCIL COMMUNICATION

**AGENDA TITLE:** Review of PCE/TCE Financing

**MEETING DATE:** October 17, 2001

**PREPARED BY:** Randall A. Hays, City Attorney

**RECOMMENDATION:** That the City Council discuss as they deem appropriate.


**BACKGROUND:** The City Council at its regular meeting of November 3, 1999 acting in its capacity as the City Council as well as acting in its capacity as the Lodi Financing Corporation approved documents which put into place monies upon which the City could draw to continue its activities relative to the City's enforcement activities involving the PCE/TCE groundwater and soil contamination within the City of Lodi.

The transaction is reasonably simple in its construction. Basically, the City has pledged as a revenue stream to pay off the borrowing, future recoveries anticipated from its enforcement activities against responsible parties for the groundwater and soil contamination in the City. In return for that pledge of revenues, Lehman Brothers has agreed to make available to the City funding to proceed with those enforcement activities. The cap on that funding is \$16 million dollars. Since the revenue stream is contingent upon successful enforcement activities, which is not as secure a revenue stream as rates charged for utility usage, the interest rate is greater than normally seen in a municipal borrowing. The base rate was tied to a money rate index known as the London Interbank Offered Rate (LIBOR). The Wall Street Journal reported on Monday, October 8, 2001 that the LIBOR 3-month rate was 2.44%. The borrowing rate for this borrowing is the LIBOR 3-month rate plus 20%.

Included with this memo are the basic documents of the transaction that resulted in the borrowing, as well as minutes of the meeting indicating the discussion surrounding the actions taken by the Council and the Lodi Financing Corporation.

**FUNDING:** N/A

Respectfully submitted,

  
Randall A. Hays, City Attorney

**APPROVED:** \_\_\_\_\_

H. Dixon Flynn -- City Manager

# Program Receipts Sale and Repurchase Agreement

PROGRAM RECEIPTS SALE AND  
REPURCHASE AGREEMENT

Dated as of June 1, 2000

Between the

THE CITY OF LODI,

As Seller and Repurchaser, and

LODI FINANCING CORPORATION,  
as Purchaser

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## PROGRAM RECEIPTS SALE AND REPURCHASE AGREEMENT

THIS PROGRAM RECEIPTS SALE AND REPURCHASE AGREEMENT, dated as of June 1, 2000 (the "Agreement"), is hereby entered into by and between the CITY OF LODI, a municipal corporation organized and existing under the laws of the State of California, as seller and assignor (the "City") and the LODI FINANCING CORPORATION, a nonprofit corporation organized and existing under the laws of the State of California, as purchaser and assignee (the "Corporation");

### WITNESSETH:

WHEREAS, there exists in the City a significant water contamination problem threatening the City's water supply and the health and safety of the City's inhabitants;

WHEREAS, in May 1997, the City executed a Comprehensive Joint Cooperative Agreement (Including Related Delegation and Settlement Agreements) with the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC") Relating to the Investigation and Abatement of the Hazardous Substance Contamination In and Affecting the City (the "Cooperative Agreement");

WHEREAS, under the Cooperative Agreement, the City is committed to act as lead agency in initiating and prosecuting environmental enforcement actions (the "Program") to compel responsible parties to investigate and clean up all actual or potential dangers to public health and the environment arising from or related to hazardous substance contamination of portions of the City's groundwater and soil located within an area of approximately 600 acres and encompassing the City's central business area (the "Lodi Area of Contamination"), as described in the Cooperative Agreement;

WHEREAS, the Cooperative Agreement fully resolved the City's liability, if any, for contamination arising, in whole or in part, from the design, construction, operation or maintenance of the City's sewer systems;

WHEREAS, it is in the public interest and welfare of the City's inhabitants that the City find a means of financing the costs of the Program in order to fulfill the City's obligations under the Cooperative Agreement, and to enforce laws and ordinances which compel responsible parties to assume the cost and responsibility for the necessary remediation work to clean up the City's water supply and preserve and enhance the City's water system;

WHEREAS, the costs of environmental litigation under the Program may be significant;

WHEREAS, the City has determined that the most feasible means of financing Program costs is through the implementation of a certificate of participation financing, which financing will facilitate the effective and expeditious abatement of an existing or threatened Environmental Nuisance (as defined in the City's Comprehensive Municipal Environmental Response and Liability Ordinance, described below) within or affecting the City;

WHEREAS, pursuant to Sections 37350 and 7158 of the California Government Code, Section 17 of the California Code of Civil Procedure, and Sections 953 and 954 of the California

Civil Code, the City may sell all or a portion of its right to receive recoveries arising from the Program;

WHEREAS, pursuant to Sections 37350 and 7158 of the California Government Code, Section 17 of the California Code of Civil Procedure, and Sections 953 and 954 of the California Civil Code, the City may purchase all or a portion of its right to receive recoveries arising from the Program;

WHEREAS, to implement this certificate of participation financing, the City proposes to irrevocably sell and convey to the Corporation its right to receive Program Receipts (as defined herein), and simultaneously therewith the Corporation desires to resell and reconvey such Program Receipts back to the City in consideration of receipt of the Repurchase Payments (as defined herein), all pursuant to this Agreement;

WHEREAS, the Corporation and U.S. Bank Trust National Association, as trustee (the "Trustee"), will enter into a Trust Agreement, dated as of the date hereof (the "Trust Agreement"), pursuant to which (i) the Corporation will assign and pledge to the Trustee its interests in and to the Repurchase Payments and (ii) the Trustee will agree to execute and deliver, from time to time, a principal amount not to exceed \$16,000,000 of certificates of participation (the "Certificates");

WHEREAS, each Certificate will evidence an undivided, proportionate interest in Repurchase Payments, consisting of a principal component and an interest component, to be made by the City, as provided herein and in the Trust Agreement;

WHEREAS, the purchase price to be paid by the Corporation for each portion of Program Receipts purchased from the City pursuant to this Agreement will be payable solely from proceeds from the sale of the Certificates;

WHEREAS, the City's obligation to make Repurchase Payments (and certain other payments under this Agreement) will be a special obligation of the City payable solely from Program Receipts;

WHEREAS, the City adopted its Comprehensive Municipal Environmental Response and Liability Ordinance, Ordinance No. 1684, on November 17, 1999, effective December 17, 1999 (the "Ordinance") pursuant to which the City, among other things, has created in favor of Certificate Holders a first lien on the Program Receipts, and the City acknowledges that such first lien is superior to all other uses of Program Receipts, except with regard to certain Permitted Deductions as provided herein;

WHEREAS, the Program Receipts may be pledged to and deposited in the Municipal Fund (as defined herein) created under the Ordinance as proceeds of the City's environmental abatement program;

WHEREAS, being payable solely from Program Receipts, the receipt by Certificate Holders of any amounts hereunder and under the Trust Agreement is unpredictable and uncertain, and accordingly there is significant risk inherent in purchasing and holding the Certificates;

WHEREAS, in view of the risks and uncertainties associated with the Certificates, the City acknowledges that the interest cost of the Certificates is significantly higher than in traditional municipal finance transactions;

WHEREAS, pursuant to Section 5900, et seq. of the California Government Code, the City, through the Corporation, is authorized to issue Certificates the interest component of which is subject to federal income taxation, and the City has determined that the interest component of the Repurchase Payments made hereunder and represented by the Certificates will be subject to federal income taxation;

WHEREAS, pursuant to Section 5906 of the California Government Code, the Certificates and the purchasers thereof will be exempt from the usury provisions of Section 1 of Article XV of the California Constitution;

WHEREAS, the City and the Corporation propose to execute and deliver a Certificate Purchase Contract (the "Certificate Purchase Contract") with Lehman Brothers Inc. (the "Original Purchaser"), pursuant to which the Original Purchaser agrees to purchase, from time to time, the Certificates in an amount up to an aggregate principal amount not to exceed \$16,000,000;

WHEREAS, Lehman Brothers Inc. has acted as Placement Agent for the Certificates;

WHEREAS, the DTSC has provided in writing that the financing described in this Sale and Repurchase Agreement, the Trust Agreement and the Certificate Purchase Contract and evidenced by the execution and delivery of the Certificates does not violate the Cooperative Agreement;

WHEREAS, the City and the Corporation have determined that all acts and proceedings required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Agreement and the consummation of the transactions authorized hereby do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the City and the Corporation are now duly authorized and empowered to execute and enter into this Agreement and to consummate such transactions for the purpose, in the manner and upon the terms herein provided;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Agreement, the Trust Agreement and of any agreement supplemental hereto and of any statement, opinion or other document herein mentioned, have the

meanings herein specified, to be equally applicable to both the singular and plural forms of any of the terms herein defined. Words of any gender shall be deemed and construed to include all genders.

#### Accreted Value

"Accreted Value" means Outstanding Principal and all unpaid Compounded Interest thereon, calculated in accordance with Section 2.04 of the Trust Agreement.

#### Additional Payments

"Additional Payments" means all amounts payable by the City as Additional Payments pursuant to Section 6.7(b) hereof.

#### Agreement or Sale and Repurchase Agreement

"Agreement" or "Sale and Repurchase Agreement" means this Program Receipts Sale and Repurchase Agreement, dated as of June 1, 2000, between the City and the Corporation, as originally executed and as it may from time to time be supplemented, modified, or amended in accordance with the terms hereof or of the Trust Agreement.

#### Authorized Representative

"Authorized Representative" means, (1) with respect to the Corporation, the President of the Corporation or the Secretary of the Corporation or any other person designated as an Authorized Representative of the Corporation by a Statement of the Corporation signed by said President and filed with the Trustee, and (2) with respect to the City, the Mayor, the City Manager, or the City Attorney of the City or any other person designated as an Authorized Representative of the City by a Statement of the City signed by said Mayor, said City Manager, or said City Attorney and filed with the Trustee.

#### Budgeted Program Costs

"Budgeted Program Costs" means those fees, expenses, and costs as allocated and described in the Program Budget as shown in Exhibit A to this Agreement.

#### Business Day

"Business Day" means a day of the year on which banks located in the city where the Corporate Trust Office is located are not required or authorized to be closed.

#### Calculation and Verification Agent

"Calculation and Verification Agent" means a financial institution, investment banking firm or accounting firm with a national reputation and capable of performing the functions assigned to the Calculation and Verification Agent herein and in the Trust Agreement, as selected or consented to by the Original Purchaser, together with such other Certificate Holders as are necessary to constitute, in the aggregate, at least 51% of outstanding Accreted Value.

#### Certificate Holder or Holder

"Certificate Holder" or "Holder," whenever used herein with respect to a registered Certificate, means the Person in whose name such Certificate is registered.

#### Certificate Purchase Contract

"Certificate Purchase Contract" means that certain Certificate Purchase Contract, dated as of June 28, 2000, between the Original Purchaser, the City and the Corporation regarding the purchase of the Certificates by the Original Purchaser.

#### Certificates

"Certificates" means the certificates of participation evidencing the undivided, proportionate interests of the Holders thereof in Program Receipts to be sold and Repurchase Payments to be made by the City pursuant to this Agreement.

#### City

"City" means the City of Lodi, a municipal corporation organized and existing under the laws of the State of California.

#### Closing Date

"Closing Date" means June 29, 2000.

#### Commitment Period

"Commitment Period" means the period beginning on the date of the Certificate Purchase Contract and ending on the Commitment Period Ending Date or the earlier occurrence of a Commitment Termination Event.

#### Commitment Period Ending Date

"Commitment Period Ending Date" means that date which is four years after the Closing Date.

#### Commitment Termination Event

"Commitment Termination Event" means the occurrence, prior to the Commitment Period Ending Date, of (a) the City's delivery of a Termination Notice to the Trustee and the Original Purchaser, stating that it will make no further Issuance Requests; (b) the reduction of the Purchase Commitment to zero as described in the Certificate Purchase Contract; (c) the Original Purchaser's decision to terminate the Purchase Commitment in the event the City substitutes its Outside Counsel or modifies the terms of engagement of its Outside Counsel in a manner which, in the sole determination of the Original Purchaser, results in a materially prejudicial change; or (d) in the sole discretion of the Original Purchaser, an uncured Event of Default hereunder or under the Trust Agreement, or a violation by the City or the Corporation of any covenant,

representation or warranty made herein or in the Certificate Purchase Contract or in the Trust Agreement, including but not limited to the occurrence of any of the proceedings or actions described in Section 9.1(e) hereof relating to bankruptcy or insolvency of the City or the Corporation or other actions described therein.

#### Compounded Interest

"Compounded Interest" means all unpaid and accrued interest with respect to the Certificates which has been added to Accreted Value. On the day before the first Business Day of each January, all Current Interest will become Compounded Interest and will be added to Accreted Value in accordance with Section 2.04 of the Trust Agreement.

#### Cooperative Agreement

"Cooperative Agreement" means the Comprehensive Joint Cooperative Agreement, executed in May 1997, between DTSC and the City regarding the investigation of and remediation of contamination in the Lodi Area of Contamination.

#### Corporation

"Corporation" means the Lodi Financing Corporation, a California nonprofit corporation.

#### Corporate Trust Office

"Corporate Trust Office" or "corporate trust office" means the corporate trust office of the Trustee in San Francisco, California, provided that, with regard to execution, delivery, transfer, exchange, registration, surrender and payment of Certificates, "Corporate Trust Office" means the corporate trust office of U.S. Bank Trust National Association in St. Paul, Minnesota, or such other or additional offices as may be designated by the Trustee.

#### Covered Subject

"Covered Subject" means a single potentially responsible party or tortfeasor that is or may be liable for the abatement of environmental conditions within the Lodi Area of Contamination as a result of that party's ownership or operation, for a certain period of time, of a facility or that party's contribution to the environmental conditions requiring abatement.

#### Current Interest

"Current Interest" means all unpaid interest with respect to the Certificates which has accrued but has not yet been compounded in accordance with Section 2.04 of the Trust Agreement.

#### Deferred Commitment Fee

"Deferred Commitment Fee" means \$2.25 million, or such lesser amount as may be payable by the City to the Original Purchaser from time to time in accordance with the terms of the Certificate Purchase Contract and the Trust Agreement.



#### Deferred Commitment Fee Reserve Account

"Deferred Commitment Fee Reserve Account" means the account by that name under the Revenue Fund established by Section 5.03 of the Trust Agreement.

#### Delivery Date

"Delivery Date," when used with respect to a particular Series of Certificates, means the date of delivery of such Series of Certificates to the Original Purchaser (as defined below) thereof. The Delivery Date for the first Series of Certificates shall be the Closing Date. The Delivery Date for each subsequent Series of Certificates shall be the first Business Day of any January, April, July, or October on or before the Commitment Period Ending Date as specified by the City in the applicable Issuance Request.

#### Distribution Date

"Distribution Date" means the first Business Day following each Repurchase Payment Date on which it is reasonably practicable for the Trustee to send payments of Accreted Value and Current Interest to Certificate Holders.

#### DTSC

"DTSC" means the California Environmental Protection Agency, Department of Toxic Substances Control, which entered into the Cooperative Agreement with the City.

#### DTSC Settlement Payments

"DTSC Settlement Payments" means those amounts used to reimburse the City for settlement payments it has previously made to DTSC for certain previously incurred response costs pursuant to Section 4.a of the Cooperative Agreement.

#### Event of Default

"Event of Default" means any of the events specified in Section 9.1 hereof.

#### Final Payment Date

"Final Payment Date" means, with respect to all Certificates, January 1, 2029.

#### Independent Accountant

"Independent Accountant" means a certified public accountant or firm of certified public accountants specializing in providing financial statements and audits for business and governmental entities and who has acted as such an accountant in California for at least three years.

### Independent Consultant

"Independent Consultant " means a reputable specialist or firm of specialists, including but not limited to an environmental consultant or an insurance consultant, qualified to evaluate a particular aspect of the Program.

### Interest Period

"Interest Period" means the 3-month period beginning on each Rate Adjustment Date to but excluding the next Rate Adjustment Date; provided that the first Interest Period shall be from and including the Closing Date to but excluding the next Rate Adjustment Date.

### Investment Securities

"Investment Securities" means investments in a money market fund rated "AAAm" or "AAAM-G" or better by S&P or a money market fund collateralized by direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America. Such money market funds may include funds for which the Trustee, its affiliates or subsidiaries provide investment advisory or other management services. The Trustee shall be entitled to rely upon any written investment direction from the City or the Corporation as a certification that such investment constitutes an Investment Security.

### Issuance Request

"Issuance Request" means a written Request and Certificate of the City, in substantially the form set forth in Exhibit B hereto, for the Trustee to execute and deliver a Series of Certificates in accordance with the provisions of Section 2.01 of the Trust Agreement.

### Legal Disbursements

"Legal Disbursements" means those amounts invoiced by Outside Counsel for out-of-pocket direct expenses at the actual cost charged by the provider of such materials or services, including postage, copying, overnight delivery services, messengers, long-distance telephone, expert witness fees and costs, and reasonable and customary travel expenses.

### Legal Fees

"Legal Fees" means those amounts invoiced by Outside Counsel for professional legal services rendered on an hourly basis, in accordance with the Retainer and Fee Agreement in connection with the Program, and as further limited and described under Exhibit A hereto.

### LIBOR and 3-month LIBOR Rate

"LIBOR" means, as of the second London banking day immediately preceding the beginning of an Interest Period (the "LIBOR Determination Date"), the rate for deposits in United States dollars for a period equal to the relevant Interest Period which appears on Telerate Page 3750 as of 11:00 a.m. , London time, on such date. If such rate does not appear on Telerate page 3750, the rate for that LIBOR Determination Date will be determined by the Calculation

and Verification Agent on the basis of the rates at which deposits in United States dollars are offered by the Reference Banks at approximately 11:00 a.m., London time, on that day to prime banks in the London interbank market for a period equal to the relevant Interest Period. For purposes of this definition, "Telerate Page 3750" means the display page currently so designated on the Dow Jones Market Service or any successor service (or such other page as may replace that page on that service or any successor service for the purpose of displaying comparable rates or prices), and "Reference Banks" means four major banks in the London interbank market selected by the Calculation and Verification Agent.

"3-month LIBOR Rate" means the LIBOR Rate in effect for the 3-month period beginning on each Rate Adjustment Date.

#### Lien

"Lien" means a security interest, lien, charge, pledge or encumbrance of any kind.

#### Lodi Area of Contamination

"Lodi Area of Contamination" means an area of approximately 600 acres encompassing the City's central business area, which is the area described in the Cooperative Agreement as the area of the City located within the county of San Joaquin, California bordered approximately by the Mokelumne River to the north, Beckman Road to the east, Harney Lane to the south, and Mills Avenue to the west and the surrounding commercial and residential area from which hazardous substances have been, or are threatened to be, released or where hazardous substances have or may come to be located.

#### Municipal Fund

"Municipal Fund" means the Lodi Area of Contamination Environmental Nuisance Abatement Fund, which is a restricted account within the Comprehensive Municipal Environmental Response Fund created under the Ordinance, or a successor or alternate fund created for substantially the same or similar purposes. Such Municipal Fund will contain two separate accounts, the Program Account and the Recovery Account, monies in which will be segregated, held and invested separately from other assets of the City.

#### Moody's

"Moody's" means Moody's Investors Service, a corporation organized and existing under the laws of the State of Delaware, its successors and assigns.

#### Notice of Reallocation

"Notice of Reallocation" means the City's written notice to the Trustee, in the form of Exhibit D hereto, with regard to reallocation among items and categories in the Program Budget.

### Ongoing Obligations

"Ongoing Obligations" when used in connection with the Program Budget, refers to a category of funds to be expended by the City for obligations arising out of, and limited to, DTSC Settlement Payments, computer document management, technical activities, project management activities, and Legal Disbursements (but not including any Legal Fees) as further described in Exhibit A hereto.

### Opinion of Counsel

"Opinion of Counsel" means a written opinion of counsel (who may be counsel for the City) selected by the City. If and to the extent required by the provisions of Sections 2.1 and 2.2 of this Agreement and Section 1.03 of the Trust Agreement, each Opinion of Counsel shall include the statements provided for in Sections 2.1 and 2.2 of this Agreement and Section 1.03 of the Trust Agreement.

### Optional Payment Date

"Optional Payment Date" means each date of transfer of funds, other than Program Receipts, by the City to the Trustee for deposit into the Revenue Fund in accordance with Section 6.7(a)(v) hereof.

### Ordinance

"Ordinance" means Ordinance No. 1684, adopted November 17, 1999 and effective December 17, 1999, repealing and reenacting the City's Comprehensive Municipal Environmental Response and Liability Ordinance, Chapter 8.24 (Health and Sanitation) of Title 8 (Health and Safety) of the Lodi Municipal Code, as it may be amended from time to time in accordance with Section 6.18 hereof.

### Original Purchaser

"Original Purchaser" means Lehman Brothers Inc. and its successors and assigns.

### Outside Counsel

"Outside Counsel" means Envision Law Group LLP, Lafayette, California, which has been selected by the City to represent the City for all matters relating to the Program, in accordance with the Retainer and Fee Agreement.

### Outstanding

"Outstanding," when used as of any particular time with reference to Certificates, (subject to the provisions of Section 11.09 of the Trust Agreement) means all Certificates theretofore, or thereupon being, executed and delivered by the Trustee under the Trust Agreement except (1) Certificates theretofore cancelled by the Trustee or surrendered to the Trustee for cancellation; (2) Certificates with respect to which all liability shall have been discharged in accordance with Section 10.01 of the Trust Agreement, including Certificates (or portions of

Certificates) referred to in Section 11.10 of the Trust Agreement; and (3) Certificates for the transfer or exchange of or in lieu of or in substitution for which other Certificates shall have been executed and delivered by the Trustee pursuant to the Trust Agreement.

#### Outstanding Certificate Obligations

"Outstanding Certificate Obligations" means, as of any date, the sum of the Accreted Value and Current Interest components of the Certificates.

#### Outstanding Principal

"Outstanding Principal" means the sum of principal amounts of all Series of Certificates issued, less any amounts representing the principal component of such Certificates which have been repaid to Certificate Holders.

#### Permitted Deductions

"Permitted Deductions" are amounts which the City may deduct from Program Receipts, up to 25% of Program Receipts collected at any time, as described in Section 6.4 hereof, prior to remittance of such Program Receipts to the Trustee and includes (a) first, certain payments to DTSC for oversight costs pursuant to Section 4.b of the Cooperative Agreement and amounts to create a reserve balance for such payments in an amount up to \$300,000 and (b) second, reimbursement to the City, up to \$2,000,000 in the aggregate over the term of this Agreement, for expenditures that were incurred by the City in connection with the Program in an amount up to \$1,000,000 prior to November 3, 1999 and in an amount up to an additional \$1,000,000 for expenditures incurred by the City on or after November 3, 1999.

#### Person

"Person" means an individual, corporation, firm, association, partnership, trust, or other legal entity or group of entities, including a governmental entity or any agency or political subdivision thereof.

#### Placement Agent

"Placement Agent" means Lehman Brothers Inc. and its successors and assigns.

#### Placement Fee

"Placement Fee" means the amount of \$1,000,000 payable to the Placement Agent on the Closing Date.

#### Program

"Program" means the City's environmental abatement program for the Lodi Area of Contamination, including all Abatement Actions (as defined in the Ordinance,) undertaken in connection therewith, which include but are not limited to study, investigation, abatement, removal, remediation or response to an Environmental Nuisance (as defined in the Ordinance) or

threat of Environmental Nuisance, monitoring and assessment or evaluation of an Environmental Nuisance, prevention or mitigation of an Environmental Nuisance and enforcement activity in response to an Environmental Nuisance, including litigation and other actions against potentially responsible parties, their indemnitors or insurers, and shall also include all activities related thereto, whether or not expressly described in the Ordinance, including litigation and other actions against potential tortfeasors, their indemnitors or insurers.

#### Program Account

"Program Account" means the account by that name established under the Municipal Fund.

#### Program Budget

"Program Budget" means the authorized disbursements of the City from the Program Account, as described in Exhibit A hereto.

#### Program Receipts

"Program Receipts" means all amounts, proceeds and recoveries from, or in contemplation of, or in connection with, the potential liability of responsible parties or potentially responsible parties, their insurers or indemnitors, or of tortfeasors or potential tortfeasors, their insurers or indemnitors, received by the City (or by any other Person on its behalf) on or after July 30, 1999, or received by the City's Outside Counsel after the Closing Date, in connection with the Program, whether in cash or non-cash form and regardless of how such amounts, proceeds, or recoveries may be characterized, labeled or allocated in any judgment, award, settlement or other agreement or payment, including but not limited to all amounts, proceeds or recoveries characterized or labeled as legal fees or disbursements or as tort claim recoveries, proceeds or settlements.

#### Purchase Commitment

"Purchase Commitment" means the total sum of up to \$16,000,000 for the purchase of various series of Certificates by the Original Purchaser or by any successor, or lesser amount as provided herein or in the Certificate Purchase Contract.

#### Quarterly Budget Reporting Form

"Quarterly Budget Reporting Form" means that report, a form of which appears in Appendix A hereto, which the City is required to submit to the Calculation and Verification Agent within 20 Business Days after the beginning of each calendar quarter (except the first quarter) to reconcile the prior quarter's expenditures with the Program Budget and to demonstrate the City's compliance with the Program Budget for the prior quarter.

#### Rate Adjustment Date

"Rate Adjustment Date" means the first Business Day of each January, April, July and October.

#### Record Date

"Record Date" means, with respect to any Distribution Date, the Business Day immediately preceding such Distribution Date.

#### Recovery Account

"Recovery Account" means the account by that name established under the Municipal Fund.

#### Remittance Report

"Remittance Report" means the City's written report to the Trustee, in the form of Exhibit C hereto, required to be delivered as provided under Section 6.4(b) of this Agreement.

#### Repurchase Payment Date

"Repurchase Payment Date" means 1) each date of transfer of Program Receipts by the City to the Trustee (net of Permitted Deductions) for deposit into the Revenue Fund in accordance with Section 6.4 hereof and 2) the Final Payment Date.

#### Repurchase Payments

"Repurchase Payments" means all amounts payable by the City as Repurchase Payments pursuant to Section 6.7(a) hereof.

#### Repurchase Price

"Repurchase Price" means the sum of (i) the principal amount of all Certificates, together with all interest (whether Current Interest or Compounded Interest) on the Certificates, (ii) the amount required to pay or fund the Deferred Commitment Fee, and (iii) all Additional Payments required to be made by the City pursuant to Section 6.7(b) hereof.

#### Retainer and Fee Agreement

"Retainer and Fee Agreement" means the Professional Services Agreement and Scope of Services Statement, dated December 1, 1999, between Outside Counsel and the City, in which the terms of Outside Counsel's engagement in connection with the Program are set forth.

#### Revenue Fund

"Revenue Fund" means the fund by that name established under the Trust Agreement, Section 5.02.

#### S&P

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., a corporation organized and existing under the laws of the state of New York, its successors and assigns.



### Series

"Series" means each series of the Certificates executed and delivered pursuant to the Trust Agreement, as often as on a quarterly basis until the Commitment Period Ending Date.

### State

"State" means the State of California.

### Statement, Request, Requisition, or Order

"Statement," "Request," "Requisition," and "Order" of the City, the Corporation, the Trustee or the Calculation and Verification Agent mean, respectively, a written statement, request, requisition, certificate, or order signed in the name of the City, the Corporation the Trustee or the Calculation and Verification Agent by an Authorized Representative of the City, the Corporation, the Trustee or the Calculation and Verification Agent, respectively. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion, or representation, and the two or more so combined shall be read and construed as a single instrument. If and to the extent required by Article II of this Agreement, each such instrument shall include the statements provided for in Article II of this Agreement.

### Supplemental Agreement

"Supplemental Agreement" means any agreement hereafter duly authorized and entered into between the Corporation and the City supplementing, modifying, or amending this Agreement; but only if and to the extent that such Supplemental Agreement is specifically authorized hereunder.

### Supplemental Trust Agreement

"Supplemental Trust Agreement" means any trust agreement hereafter duly authorized and entered into between the Corporation and the Trustee supplementing, modifying, or amending the Trust Agreement; but only if and to the extent that such Supplemental Trust Agreement is specifically authorized under the Trust Agreement.

### Termination Notice

"Termination Notice" means that written notice from the City to the Trustee and the Original Purchaser, a form of which is attached hereto as Exhibit F, as provided under the Certificate Purchase Contract and the Trust Agreement, that the City has permanently and irrevocably discontinued making Issuance Requests.

### Trust Agreement

"Trust Agreement" means that certain trust agreement, dated as of June 1, 2000, between the Corporation and the Trustee, as originally executed and as it may from time to time be supplemented, modified, or amended in accordance with the terms thereof.

### Trustee

"Trustee" means U.S. Bank Trust National Association, a national banking association organized and existing under the laws of the United States of America, or its successor, as Trustee hereunder as provided in Section 8.01 of the Trust Agreement.

### Variable Rate

"Variable Rate" means the variable interest rate evidenced by the Certificates and determined from time to time in accordance with Section 2.04 of the Trust Agreement.

## ARTICLE II

### CONTENT OF CERTIFICATES AND OPINIONS

Section 2.1. Content of Statements and Opinions. Every statement or opinion provided for in this Agreement with respect to compliance with any provision hereof shall include (1) a statement that the individual making or giving such statement or opinion has read such provision and the definitions herein relating thereto; (2) a brief statement as to the nature and scope of the examination or investigation upon which the statement or opinion is based; (3) a statement that, in the opinion of such individual, he has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion with respect to the subject matter referred to in the instrument to which his signature is affixed; and (4) a statement as to whether, in the opinion of such individual, such provision has been complied with.

Section 2.2. Reasonable Basis for Statements and Opinions. Any such statement or opinion made or given by an officer of the City may be based, insofar as it relates to legal, accounting, or environmental matters, upon a statement or opinion of or representation by counsel, an Independent Accountant or an Independent Consultant selected by the City, unless such officer knows, or in the exercise of reasonable care should have known, that the statement, opinion or representation regarding the matters upon which such statement or opinion may be based, as aforesaid, is erroneous. Any such statement or opinion made or given by such counsel, Independent Accountant or Independent Consultant may be based, insofar as it relates to factual matters (with respect to which information is in the possession of the City) upon a statement or opinion of or representation by an officer of the City, unless such counsel, Independent Accountant or Independent Consultant knows, or in the exercise of reasonable care should have known, that the certificate or opinion or representation regarding the matters upon which such individual's statement or opinion or representation may be based, as aforesaid, is erroneous. The same officer of the City, or the same counsel, Independent Accountant or Independent Consultant, as the case may be, need not certify to all of the matters required to be certified under any provision of this Agreement, but different officers, counsel, Independent Accountants or Independent Consultants may certify to different matters, respectively.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Section 3.1. Representations and Warranties of the City. The City makes the following representations and warranties to the Corporation as of the date of the execution of this Agreement and as of the Closing Date (such representations and warranties to remain operative and in full force and effect regardless of delivery of the Certificates or any investigations by or on behalf of the Corporation or the results thereof):

(a) The City is a municipal corporation duly organized and existing under the laws of the State, has full legal right, power and authority to enter into this Agreement and to carry out and consummate all transactions contemplated by this Agreement.

(b) This Agreement has been duly authorized, executed, and delivered by the City and constitutes the legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms; except as enforcement may be limited by bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally and by the application of such equitable principles as the court having jurisdiction may impose, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(c) The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the fulfillment of or compliance with the terms and conditions hereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any indenture, mortgage, deed of trust, agreement, lease, contract, the Cooperative Agreement, or other agreement or instrument to which the City is a party or by which it or its properties are otherwise subject or bound, or, to the knowledge of the City, after reasonable inquiry and investigation, any applicable law or administrative rule or regulation, the Ordinance or any other applicable ordinance, or any applicable court or administrative decree or order, or result in the creation or imposition of any prohibited Lien, charge, or encumbrance of any nature whatsoever upon any of the property or assets of the City, which conflict, violation, breach, default, lien, charge, or encumbrance might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement. The first lien on and pledge of Program Receipts under this Agreement and the Trust Agreement, as permitted by the Ordinance, are valid and enforceable and are prior to any other lien or claim on Program Receipts, and all other provisions of the Ordinance, insofar as they affect the rights of the Original Purchaser and the Certificate Holders and the transactions herein contemplated, are valid and enforceable.

(d) No consent or approval of any trustee or holder of any indebtedness of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery of this Agreement, the consummation of any transaction herein

contemplated, or the fulfillment of or compliance with the terms and conditions hereof except as have been obtained or made and as are in full force and effect.

(e) There is no action, suit, proceeding, inquiry or investigation, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the City after reasonable inquiry and investigation, threatened, against or affecting the City or the assets, properties or operations of the City which, if determined adversely to the City or its interests, could have a material adverse effect upon the consummation of the transactions contemplated by or the fulfillment of or compliance with the terms and conditions of or the validity of this Agreement, and the City is not in material default (and no event has occurred and is continuing which, with the giving of notice or the passage of time or both, could constitute a material default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by this Agreement.

(f) No representation made, nor any information, exhibit or report furnished to, the Corporation by the City in connection with the negotiation of this Agreement or the Trust Agreement contains any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. There is no fact that the City has not disclosed to the Corporation or the Trustee in writing that materially and adversely affects or in the future may (so far as the City can now reasonably foresee) materially and adversely affect the ability of the City to perform its obligations under this Agreement or any documents or transactions contemplated hereby.

(g) The Program Receipts are free and clear of all Liens and encumbrances, other than Permitted Deductions and may be deposited in the Municipal Fund created under the Ordinance as proceeds of the City's environmental abatement program.

#### ARTICLE IV

##### CONVEYANCE OF PROGRAM RECEIPTS

Section 4.1. Sale and Repurchase of Program Receipts. Effective on the Closing Date, (a) the City does hereby and irrevocably sell and convey to the Corporation, without recourse, all Program Receipts in consideration of the receipt from the Corporation of the proceeds of the Certificates executed and delivered on the Closing Date and on each subsequent Delivery Date and the Corporation's agreement hereunder to deliver the same, and (b) the Corporation hereby resells and reconveys to the City all Program Receipts in consideration of the City's agreement hereunder to make payment of the Repurchase Price. The delivery of the proceeds of the Certificates (less, in the case of the initial Series of Certificates, an amount equal to the Placement Fee) by the Corporation shall constitute full consideration for the sale of the Program Receipts by the City.

The parties acknowledge that the City constitutes both the seller of Program Receipts and the purchaser of Program Receipts under this Agreement. The obligation of the City to sell Program Receipts to the Corporation and the obligation of the City to repurchase Program Receipts from the Corporation represent, and in all respects of any nature whatsoever shall always represent, be interpreted as, and constitute separate and distinct obligations. Under no circumstances whatsoever shall a merger of the roles or obligations of the City as seller of Program Receipts and as purchaser of Program Receipts under this Agreement occur or be deemed to occur.

Section 4.2. Sale Effected Without Further Action. The City and the Corporation agree that, effective on the Closing Date, the Corporation will acquire, upon delivery of the proceeds of the initial Series of Certificates executed and delivered on the Closing Date, a perfected ownership interest in the Program Receipts, and simultaneously therewith the City will reacquire such ownership interest, subject, however, to the lien and pledge on the Program Receipts created pursuant to this Agreement and the Trust Agreement, and that no further action will be required by either party hereto (other than the transfer of the proceeds of the Certificates) to effect the absolute sale and conveyance of the Program Receipts to the Corporation and the resale and reconveyance of the Program Receipts to the City.

Section 4.3. Protective Filings. The City shall take all necessary actions to execute and deliver, or cause to be executed and delivered, to the Corporation and the Trustee all such other and further instruments, documents, and assurances, including the filing of any financing statements under the Uniform Commercial Code as of each Delivery Date and as of each date of settlement or other receipt of Program Receipts, as may be necessary or reasonably required by the Corporation in order to perfect and protect the Corporation's or the Trustee's security interest in the Program Receipts created pursuant to this Agreement and the Trust Agreement. Upon such execution and delivery, the City shall deliver, or cause to be delivered, a copy of all such instruments and documents to the Original Purchaser.

## ARTICLE V

### TERM OF THE AGREEMENT

Section 5.1. Term. This Agreement shall commence on the Closing Date, and shall terminate upon the payment or discharge by the Corporation of all Certificates in accordance with Article X of the Trust Agreement and the payment in full of the Deferred Commitment Fee and any other amounts authorized or required to be paid by the City hereunder or under the Certificate Purchase Contract and, if full payment of such amounts is made or provided for prior to the Commitment Period Ending Date, the delivery by the City to the Trustee of a Termination Notice pursuant to the Certificate Purchase Contract.

## ARTICLE VI

### COVENANTS AND SECURITY PROVISIONS REGARDING PROGRAM RECEIPTS

Section 6.1. Pledge of Program Receipts. In order to secure its obligation to make payment in full of the Repurchase Price of all Program Receipts, the City hereby grants, pledges and assigns to the Corporation a first, prior and perfected security interest in all Program Receipts received by the City (or any other Person on its behalf) or received by the City's Outside Counsel, subject only to the right of the City to make Permitted Deductions from such Program Receipts. Accordingly, the City shall not be entitled to retain any Program Receipts, other than Permitted Deductions, until the Repurchase Price for all Program Receipts has been paid in full.

Section 6.2. No Liens. Except for the conveyances hereunder or any Lien for the benefit of the Corporation, the City will not sell, pledge, assign or transfer, or grant, create, or incur any Lien on, any of the Program Receipts, or any interest therein, and the City shall defend the right, title and interest of the Corporation and the Trustee in, to and under the Program Receipts against all claims of third parties claiming through or under the City.

Section 6.3. Notice of Liens. The City will notify the Corporation and the Trustee promptly after becoming aware of any Lien on any of the Program Receipts, other than the conveyances hereunder. In the event any Lien attaches to or is filed against the Program Receipts, the City, at its own expense, shall cause each such Lien to be fully discharged and released.

#### Section 6.4. Collection and Remittance of Program Receipts.

(a) The City will deposit all Program Receipts upon receipt thereof in the Recovery Account and, within two Business Days after receipt thereof, will transfer such Program Receipts, net of Permitted Deductions, to the Trustee for deposit into the Revenue Fund held by the Trustee under Section 5.02 of the Trust Agreement. In no event will the City be obligated to transfer Program Receipts to the Trustee in excess of amounts necessary to pay the Outstanding Certificate Obligations, deposits to the Deferred Commitment Fee Reserve Account, and any other payments due hereunder. The City hereby covenants that it will maintain the Recovery Account as a separate account under the Municipal Fund and that amounts in the Recovery Account will be segregated, held and invested separately from other assets of the City.

(b) The City shall accompany each remittance of Program Receipts to the Trustee with a Remittance Report in the form of Exhibit C hereto, detailing the source(s) of the total Program Receipts received, the date the Program Receipts were received, their total amount, and the City's calculation of any Permitted Deductions and deposits to the Deferred Commitment Fee Reserve Account. Simultaneously with the City's delivery of each Remittance Report to the Trustee, the City shall deliver a copy of the Remittance Report to the Calculation and Verification Agent. In accordance with such Remittance Report, the City shall direct the Trustee to return to the City any amounts which the

Calculation and Verification Agent determines to be in excess of the amounts required to be transferred to the Trustee under Section 6.4(a) above.

(c) The City covenants, represents and agrees that it will use its best efforts to give the Trustee and the Calculation and Verification Agent, as soon as practicable, notice of the date that any recoveries, payments settlements or judgments are anticipated to be received in the Recovery Account, together with the approximate amount of any such receipts. The City agrees that the duty to deposit Program Receipts into the Recovery Account and to transfer Program Receipts to the Trustee is a ministerial obligation that can be enforced against the City in a suit by mandamus.

(d) The City agrees that the amount of Program Receipts transferred to the Trustee hereunder shall include the amount necessary, as calculated by the Calculation and Verification Agent, to fund the Deferred Commitment Fee Reserve Account created under Section 5.03 of the Trust Agreement, which amount shall be the then outstanding balance of the Deferred Commitment Fee as calculated in accordance with Section 3 of the Certificate Purchase Contract.

(e) Notwithstanding the foregoing, if, on or before the Commitment Period Ending Date, there are no Certificates Outstanding, the Deferred Commitment Fee Reserve Account is fully funded, and no Commitment Termination Event has occurred, then the City may retain all Program Receipts and, subject to payment of Permitted Deductions, may deposit such Program Receipts into the Program Account. All amounts so retained pursuant to this subsection (e), will reduce, dollar for dollar, the amount of any Purchase Commitment under the Certificate Purchase Contract, unless the Original Purchaser (which may withhold its approval in its sole discretion) agrees that no reduction of the Purchase Commitment will occur. Program Receipts deposited to the Program Account in accordance with this subsection (e) may then be used to pay (1) Budgeted Program Costs and (2) the remainder, if any, of Permitted Deductions. When there are no Certificates outstanding, and all other obligations under this Agreement have been fully satisfied and the Purchase Commitment has been terminated, all of the foregoing limitations will be of no further force and effect.

**Section 6.5. Subordination of Claims under Retainer and Fee Agreement.** The City covenants, represents and warrants that it has entered into the Retainer and Fee Agreement with Outside Counsel whereby Outside Counsel agrees that any claims it might have against the Program Receipts and any other amounts payable in connection with the Program are fully subordinate to any and all claims of the Original Purchaser and any other Certificate Holders, including the right of the Original Purchaser to receive the Deferred Commitment Fee. The City hereby assigns all rights under any subordination agreement with Outside Counsel to the Original Purchaser and any other Certificate Holders, as well as, to the extent permitted by law, the City's rights to any claims which the City could raise against such counsel as a result of any error or omission in connection with services rendered by such counsel to the City. If the City substitutes its Outside Counsel or modifies the terms of engagement of its Outside Counsel, it shall promptly notify the Original Purchaser and, if such substitution or modification, in the sole determination of the Original Purchaser, results in a materially prejudicial change, the Original Purchaser may terminate the Purchase Commitment. The City covenants that all fees and



disbursements incurred by Outside Counsel and any other law firms that have provided services to the City in connection with the Program prior to the date hereof have either been paid in full or are subordinated in accordance with this Section 6.5.

#### Section 6.6. Settlements.

(a) The City may, in its sole discretion, accept cash or non-cash settlements of legal actions under the Program, including but not limited to administrative orders and proceedings and judicial proceedings, in accordance with subparagraphs (i) and (ii) below when a defendant, potentially responsible party, potential tortfeasor, indemnitor or insurer wishes to settle, make payment or otherwise resolve its liabilities in connection with the Program.

(i) If the City accepts a non-cash settlement when any Certificates are Outstanding, the City will deposit into the Recovery Account, as Program Receipts, from any available funds of the City, an amount sufficient to pay Certificates with an Accreted Value equivalent to the dollar value of the non-cash settlement, as determined and certified to by an Independent Consultant; and

(ii) If there is any remaining dollar value after the payment under subparagraph (i) above (i.e., the dollar value of the non-cash settlement is greater than the Accreted Value of the Outstanding Certificates) or if there are no Outstanding Certificates, the City's acceptance of a non-cash settlement will reduce the Purchase Commitment by the remaining dollar value of the non-cash settlement, as determined by an Independent Consultant.

(b) Provisions (i) and (ii) of paragraph (a) above do not apply with respect to a maximum of two Covered Subjects for which the City accepts non-cash settlements that resolve or release the defendants' or potentially responsible parties' or potential tortfeasors' insurers' duty to defend, if:

(i) Policy or coverage limits are not reduced, eroded, or otherwise affected by the settlement; and

(ii) With respect to each defendant, potentially responsible party or potential tortfeasor, there remains at least one "highly rated insurer," with a duty to defend, with which the City has not settled such duty to defend on a non-cash basis. A "highly rated insurer" means an insurer with a claims paying ability rating of A3 or greater by Moody's or A- or greater by S&P at the date of the settlement in question.

(c) The Trustee may waive in writing provisions (i) and (ii) under paragraph (a) above in advance of a settlement upon the written direction of the Original Purchaser, together with such other Certificate Holders as are necessary to constitute, in the aggregate, at least 51% of the Outstanding Accreted Value. The Original Purchaser and Certificate Holders shall be reasonable in considering a request for such a waiver.



(d) Prior to the finalization of any settlement under this Section 6.6, the City will provide detailed reports to the Trustee, the Original Purchaser and all Certificate Holders regarding all cash and non-cash settlements, including information sufficient to demonstrate that the requirements of this Section 6.6 have been met and including information requested by the Independent Consultant in order to establish the dollar value of the settlement.

Section 6.7. Payments.

(a) Repurchase Payments. The Accreted Value component and the Current Interest component of Repurchase Payments made hereunder shall be assigned to the Trustee and shall constitute the source of payment with respect to the Certificates issued under the Trust Agreement. For each Series of Certificates issued as of any Delivery Date pursuant to the Trust Agreement, the City shall make Repurchase Payments at the time and in the amounts set forth below.

(i) Mandatory Payment of Repurchase Payments. The Accreted Value and Current Interest components of the Repurchase Payment with respect to any Series of Certificates will be due and payable on each Repurchase Payment Date, in an amount which totals the amount of Program Receipts transferred to the Revenue Fund (rounded to the nearest \$1,000 denomination), to be applied as provided in Section 6.7(a)(vi) below.

(ii) Calculation and Accrual of Current Interest. The Current Interest component of the Repurchase Payment for each Interest Period or portion thereof preceding a Repurchase Payment Date shall equal the sum of interest accruing at the Variable Rate in effect during each such Interest Period on the outstanding Accreted Value of such Series of Certificate on each day during such Interest Period, as provided in Section 2.04 of the Trust Agreement. In no event shall the Variable Rate exceed 30 percent per annum. The sum of all unpaid Current Interest for all Interest Periods or portions thereof during any calendar year shall be added to Accreted Value of the Certificates as of the day before the first Business Day of each January, after which date such Accreted Value will bear interest at the Variable Rate.

(iii) Cessation of Interest Accrual. If as a result of one or more final judgments of a court, including courts of appeal and the California and United States supreme courts, the City concludes and informs the Original Purchaser and the Trustee in writing that it will no longer engage in activities in pursuit of Program Receipts, then the Original Purchaser will enter into a written agreement (the "Cessation Agreement") thereby causing interest to cease to accrue on the Certificates thirty-six months after the date of such Cessation Agreement. The Cessation Agreement shall be null and void if the City for any reason continues to engage in activities in pursuit of Program Receipts subsequent to the date of the Cessation Agreement.

(iv) Source and Use of Repurchase Payments. As provided in Article VI hereof, the City and the Corporation agree that all Repurchase Payments required to be made hereunder shall be paid by the City exclusively from Program Receipts, shall be secured by a first and prior lien on all Program Receipts, and shall be used to pay Outstanding Certificate Obligations.

(v) Optional Payment From Other Funds. In addition to its obligation to pay Repurchase Payments from Program Receipts as provided herein, the City shall have the option, at any time and from time to time, to make Repurchase Payments from any other legally available funds. To exercise such option, the City shall transfer such other funds to the Trustee, as assignee of the Corporation, and provide the Trustee with an Order of the City directing that such funds be applied to the payment of Outstanding Certificate Obligations in accordance with Section 4.02 of the Trust Agreement. Amounts transferred to the Trustee pursuant to this Section shall be deposited in the Revenue Fund and will be credited against the Outstanding Certificate Obligations in accordance with Section 6.4 hereof.

(vi) Application of Payments. All Program Receipts deposited into the Revenue Fund shall be applied: first, to the costs of indemnification of the Placement Agent, the Calculation and Verification Agent, the Original Purchaser and Certificate Holders under Section 8.2 hereof; second, to the Current Interest component of the Repurchase Payments due hereunder; third, to the Compounded Interest portion of the Accreted Value component of the Repurchase Payments due hereunder; fourth, to the Outstanding Principal portion of the Accreted Value component of the Repurchase Payments due hereunder; fifth, to fully fund the Deferred Commitment Fee Reserve Account; and sixth, to pay any portion of the Deferred Commitment Fee, if and when due, to the Original Purchaser. Any Repurchase Payment not paid when due shall bear interest from the date such payment is first due at the Variable Rate, as adjusted from time to time and as compounded in accordance with the terms hereof and of the Trust Agreement. Any interest paid on the Certificates (either Current Interest or Compounded Interest) will reduce the Deferred Commitment Fee, and the required balance in the Deferred Commitment Fee Reserve Account, dollar for dollar.

(b) Additional Payments. The City will pay, within 10 Business Days after receipt of an invoice therefor, (i) all taxes and assessments of any type or character charged to the Corporation or the Trustee as a result of the sale or repurchase of Program Receipts or in any way arising due to the transactions contemplated hereby, (ii) all costs and expenses incurred by the Corporation, the Trustee and the Calculation and Verification Agent in connection with the execution, performance or enforcement of this Agreement and of the Trust Agreement, including but not limited to payment of all fees, costs and expenses and all administrative costs of the Corporation, the Trustee and the Calculation and Verification Agent in connection with the execution and delivery of each Series of Certificates and collection and distribution of the Program Receipts, together with all salaries and wages of employees, all expenses, compensation and indemnification of the Trustee payable by the Corporation under the Trust Agreement,

fees of auditors, accountants, attorneys or taxes and all other necessary administrative costs of the Corporation or charges required to be paid by it in order to maintain its existence or to comply with the terms of the Certificates or the Trust Agreement, (iii) all costs of indemnification of the Corporation and the Trustee under Section 8.2 hereof, (iv) the Deferred Commitment Fee (including required deposits to the Deferred Commitment Fee Reserve Account) and (v) all costs of indemnification of the Placement Agent, the Calculation and Verification Agent, the Original Purchaser and Certificate Holders under Section 8.2 hereof. The City reserves the right to audit billings for such Additional Payments although exercise of such right shall in no way affect the duty of the City to make full and timely payment for all such Additional Payments.

The City will make payments described in the preceding paragraph (except for payments under clauses (iv) or (v) above) from any lawfully available moneys of the City. The City will make payments described in clause (iv) solely from Program Receipts. The City will make payments described in clause (v) from Program Receipts and any proceeds of insurance or self-insurance programs in which the City has participated or will participate.

Section 6.8. Obligations of the City Unconditional. Except as otherwise provided herein, the obligation of the City to make payments hereunder and to perform and observe other agreements on its part contained herein is absolute and unconditional, and shall not be abated, rebated, setoff, reduced, abrogated, terminated, waived, diminished, postponed, or otherwise modified in any manner or to any extent whatsoever while any Certificates remain Outstanding or any other payments required hereunder remain unpaid, regardless of any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, any change in the laws of the United States of America or of the State or any political subdivision thereof or in the rules or regulations of any governmental authority, or any failure of the Corporation to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Agreement or the Trust Agreement. The City shall pay over and transfer all Program Receipts and all other payments required hereunder, regardless of any rights of set-off, recoupment, abatement, or counterclaim that the City might otherwise have against the Corporation or any other party or parties.

Notwithstanding the above, the obligations of the City to pay Repurchase Payments, the Deferred Commitment Fee and the indemnity obligations to the Special Indemnified Parties described in Section 8.2 hereof are special obligations of the City payable solely from the Program Receipts (or insurance proceeds or self-insurance as described in Section 6.7(b) above) as provided herein and in the Trust Agreement. Neither the general fund nor any enterprise fund of the City is liable (except to the extent that Program Receipts are credited thereto), and neither the credit nor the taxing power of the City is pledged for the payment of the Repurchase Payments or the Deferred Commitment Fee. To the extent that the City is unsuccessful in recovering sufficient amounts to make the Repurchase Payments required to be made hereunder (representing the Accreted Value and Current Interest components of the Certificates) from Program Receipts designated as Abatement Action Costs (as defined in the Ordinance) or "clean up costs" from responsible parties or tortfeasors, Certificate Holders will be entitled to be paid from any Program Receipts, notwithstanding the manner in which such receipts are labeled or described in any judgment, settlement agreement or insurance payment.

Section 6.9. Payment of the Deferred Commitment Fee. If on any date all Certificates have been paid or discharged in accordance with the Trust Agreement and, if such date is prior to the Commitment Period Ending Date, either (i) the maximum aggregate principal amount of Certificates, subject to certain reductions as permitted by the Certificate Purchase Contract and the Trust Agreement, has been issued and delivered under the Trust Agreement, or (ii) any other Commitment Termination Event has occurred, then the City shall direct the Trustee to apply all amounts in the Deferred Commitment Fee Reserve Account and all other Program Receipts to the payment of the Deferred Commitment Fee, as provided under Sections 5.03 and 5.04 of the Trust Agreement.

Section 6.10. Taxes, Other Governmental Charges. The City covenants, warrants and agrees that the Program Receipts will be exempt from all taxes of any kind, and if the Program Receipts are subject to taxation in any form, the City will pay, as the same become due and in accordance with Section 6.7(b), all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Program.

Section 6.11. Application of Moneys in the Program Account. The City will deposit all proceeds of the Certificates, upon receipt, into the Program Account and will invest all such amounts, until they are applied to the payment of Budgeted Program Costs, in Investment Securities which mature by the date they are expected to be used. The City hereby covenants that it will maintain the Program Account as a separate account under the Municipal Fund and that amounts in the Program Account will be segregated, held and invested separately from other assets of the City.

The City will apply moneys in the Program Account for the sole purpose of paying Budgeted Program Costs in accordance with the Program Budget, attached hereto as Exhibit A, and will comply with all expenditure limitations by category (Legal Fees and Ongoing Obligations) and applicable sub-categories (Legal Fees by tier and Ongoing Obligations consisting of DTSC Settlement Payments, computer document management, technical activities, project management and Legal Disbursements), except as such limitations are modified pursuant to Section 6.12 below. Within 20 Business Days after the end of each calendar quarter during the Commitment Period, or thereafter while any Certificates are Outstanding and the Deferred Commitment Fee has not been paid in full, the City shall prepare and transmit to the Calculation and Verification Agent a Quarterly Budget Reporting Form, in the form attached to Exhibit A, and will submit an amended Quarterly Budget Reporting Form to the Calculation and Verification Agent when invoices for services rendered during a quarter are received or paid after the filing of the Quarterly Budget Reporting Form for that quarter. The Calculation and Verification Agent, as directed in the Quarterly Budget Reporting Form, shall verify the City's calculations, shall determine whether the application of amounts in the Program Account is in compliance with the Program Budget, and shall promptly transmit a report describing the result of its review to the City, the Original Purchaser, other Certificate Holders and the Trustee. Upon receipt of notice that the City's calculations were erroneous or that any disbursements were not in compliance with the Program Budget, the City shall, as applicable, promptly correct its calculations and take all necessary actions to comply with the Program Budget. The City shall promptly transmit to the Calculation and Verification Agent an amended Quarterly Budget Reporting form showing all recalculations and any actions taken to comply with the Program Budget, and the Calculation and Verification Agent shall follow the procedures described above

with respect to the initial submission of the applicable Quarterly Budget Form. The Trustee shall receive copies of all Quarterly Budget Reporting Forms, amendments thereto and reports issued thereunder and shall transmit copies to the Original Purchaser and Certificate Holders but shall have no duty to review such reports filed with it hereunder and shall not be responsible for the application of or allocation of amounts in the Program Account.

Section 6.12. Program Budget; Reallocation of Certain Amounts. The City may reallocate funds in the Program Account subject to the guidelines and limitations provided in the Program Budget, attached hereto as Exhibit A. In the event that the City elects to reallocate amounts deposited into the Program Account from Ongoing Obligations to Legal Fees or from Legal Fees to Ongoing Obligations, then the City, prior to such reallocation and expenditure, will file a Reallocation Notice Regarding Amounts in Program Account with the Trustee in the form of Exhibit D hereto and will certify that such reallocation is consistent with the provisions of this Section and the Program Budget. Within 5 Business Days after the receipt thereof, the Trustee shall transmit a copy of any Reallocation Notice to the Original Purchaser, other Certificate Holders, and the Calculation and Verification Agent.

Any request for an increase to the Ongoing Obligation Payment Limits set forth in Exhibit A hereto must be delivered by the City to the Trustee in the form of the Ongoing Obligation Payment Limit Increase Approval Form, attached hereto as Exhibit E, for transmittal to the Original Purchaser and Certificate Holders within 5 Business Days after the Trustee's receipt thereof and must be approved by the Original Purchaser and Certificate Holders within 5 Business Days after the Original Purchaser's and Certified Holders' receipt thereof. If such approval is not received by the Trustee within 5 Business Days, the request shall be deemed denied. In accordance with the Ongoing Obligation Payment Limit Increase Approval Form, the Trustee shall send a report of the Original Purchaser's and other Certificate Holders' response to the City, the Calculation and Verification Agent, and the Original Purchaser and other Certificate Holders. The Trustee shall deliver to the Original Purchaser, the Certificate Holders, the City and the Calculation and Verification Agent, as the case may be, but shall have no duty to review, such notices, reports, requests or certifications filed with it under this Section 6.12 and shall not be responsible for the application or allocation of amounts in the Program Account.

Section 6.13. Delivery of Reports and Records. The City agrees to deliver, or to cause to be delivered, reports to the Trustee, to the Calculation and Verification Agent, to the Corporation and to the Original Purchaser and any other Certificate Holder on a quarterly basis, or more often as reasonably requested, regarding the application of amounts in the Program Account, including statements of Legal Fees, classified by individual attorney, task performed and time devoted to task, and a detailed report of Ongoing Obligations, including Legal Disbursements, subject to the assertion of any privilege or protection of any nature, including but not limited to the attorney-client privilege and the attorney work-product protection, available to the City or its attorneys. Subject to the assertion of any such privilege or protection, the City will allow the Trustee (who will have no duty to review or inspect such records and documents), the Calculation and Verification Agent, the Original Purchaser, any Certificate Holder and any auditor on behalf of the Corporation, access to all records and documents detailing receipt of amounts into the Program Account and disbursements from the Program Account. Reports and records required by this Section 6.13 will include the information required by Sections 6.4(b), 6.6(d), 6.11 and 6.12 hereof.

Section 6.14. Annual Certification and Audit. As soon as practicable but in no event later than April 30 of each year, the City shall file with the Trustee and the Calculation and Verification Agent a written statement of an Independent Accountant and a certificate from an Authorized Representative of the City, having reviewed the City's records and the provisions of this Agreement, including but not limited to Section 6.13 and Exhibit A, Exhibit D, and Exhibit E hereof, stating that nothing has come to the attention of such Independent Accountant or Authorized Representative that would lead such Independent Accountant or Authorized Representative to believe that (i) amounts in the Program Account have been applied in violation of this Agreement, such as moneys being expended for Legal Fees and Ongoing Obligations in violation of the Program Budget, moneys being reallocated in a manner violating the Program Budget, or any budget cap or limitation being exceeded, (ii) the receipt and remittance of Program Receipts or the calculation, retention and payment of Permitted Deductions are in violation of the terms of this Agreement or the Program Budget, or (iii) any settlement entered or proposed to be entered is not in accordance with the terms of Section 6.6 hereof, or (iv) any other Event of Default hereunder shall have occurred and be continuing.

Section 6.15. Diligent Pursuit of Program Receipts; Engagement of Outside Counsel. The City hereby covenants that, until all Outstanding Certificates and the Deferred Commitment Fee have been fully paid and the Purchase Commitment has been reduced to zero, it will diligently pursue collection of Program Receipts, will at all times have engaged competent legal counsel with recognized expertise in matters involving environmental litigation, and will not terminate the Cooperative Agreement or cause the Cooperative Agreement to be terminated.

Section 6.16. Single Purpose Corporation. The City hereby covenants that it will not use the Corporation for, and the Corporation hereby covenants that it will not participate in, any other financing or other arrangement in addition to the sale and repurchase of Program Receipts and issuance of the Certificates hereunder and under the Trust Agreement.

Section 6.17. Cooperation With Removal or Replacement of Trustee. The City hereby covenants that it will cooperate with the Corporation as needed in connection with the removal or replacement of the Trustee in accordance with Section 8.01(d) of the Trust Agreement.

Section 6.18. No Impairment of Certificate Holders' Rights. The City hereby covenants that it will not repeal the Ordinance or amend any provision of the Ordinance in a manner which would adversely affect the rights of the Certificate Holders until the Certificates are fully paid and discharged and the Purchase Commitment has terminated. The City will provide reasonable notice to the Original Purchaser, the Certificate Holders and the Trustee in the event the City anticipates any amendment to or repeal of the Ordinance.

## ARTICLE VII

### ASSIGNMENT OF AGREEMENT TO TRUSTEE

Section 7.1. Assignment by City and Corporation. The parties understand that this Agreement and certain rights of the Corporation hereunder will be assigned to the Trustee pursuant to an assignment provision in the Trust Agreement. The City hereby transfers in trust,



grants a security interest in and assigns to the Trustee, for the benefit of the Holders from time to time of the Certificates and for the benefit of the Original Purchaser (to the extent of its interest in the Deferred Commitment Fee) all of its right, title, and interest in this Agreement and all of its interest in the Program Receipts, net of Permitted Deductions. The City agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by the Corporation, the Trustee, the Original Purchaser or any Holder to protect their interests in the Program Receipts during the term hereof, and to provide copies thereof to the Corporation, the Trustee, the Calculation and Verification Agent, the Original Purchaser, and upon request therefor, to any Certificate Holder so requesting.

## ARTICLE VIII

### NON-LIABILITY OF CORPORATION; INDEMNIFICATION

Section 8.1. Non-Liability of Corporation. The Corporation shall not be obligated to pay Repurchase Payments or the Deferred Commitment Fee or to make any other payments or advance any moneys or be liable for any other costs or expenses hereunder.

#### Section 8.2. Indemnification.

(a) General Indemnity. The City shall, to the extent permitted by law, defend, indemnify and hold harmless the Corporation, the Trustee (as the assignee of the Corporation's rights hereunder), the Placement Agent, the Calculation and Verification Agent, the Original Purchaser, each Certificate Holder and their members, directors, officers, employees, and agents from and against any and all losses, claims, damages, liabilities, or expenses of every kind, character, and nature whatsoever (excepting therefrom only such losses, claims, damages, liabilities, or expenses arising from the negligence of the Corporation, with respect to the Corporation, or the Trustee, with respect to the Trustee), including, but not limited to, losses, claims, damages, liabilities, or expenses arising out of, resulting from, or in any way connected with (1) the City's interest in, or use of, the Program Receipts or any portion thereof; (2) the sale of the Certificates and the carrying out of any of the transactions contemplated by the Certificates, the Certificate Purchase Contract, the Trust Agreement, this Agreement or any related document; (3) the carrying out of the Program; or (4) the acceptance of and administration by the Trustee of the Trustee's duties under the Trust Agreement. The City shall, to the extent permitted by law and, with respect to the indemnification of the Placement Agent, the Calculation and Verification Agent, the Original Purchaser and each Certificate Holder, (each a "Special Indemnified Party"), to the extent permitted by clause (b) below, pay or reimburse the Corporation, the Trustee, the Special Indemnified Parties and their members, directors, officers, employees and agents for any and all costs, reasonable attorneys fees, liabilities or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, expenses or actions. Notwithstanding anything to the contrary in this Agreement or the Trust Agreement, the Trustee and the Corporation shall not be entitled to payment, reimbursement or indemnification for actions involving willful misconduct, default or negligence on the part of the Trustee or the Corporation, respectively.

(b) Limited Source Indemnity. The obligation of the City to defend, indemnify, and hold harmless the Special Indemnified Parties for any suits or claims arising from the sale of the Certificates or the City's pursuit of the Program (as described in the preceding paragraph), shall be payable solely from (i) Program Receipts, and (ii) any proceeds of insurance or self-insurance programs in which the City has participated or will participate. With regard to item (i), if currently available Program Receipts are insufficient to pay attorney fees and expenses and other litigation related costs at the time they are incurred, the Special Indemnified Parties may fund the excess of such fees and expenses, and any future Program Receipts will be used to reimburse the Special Indemnified Parties for such amounts. With regard to item (ii), the City agrees to cooperate fully with the Special Indemnified Parties in submitting and pursuing claims against such City insurers, although the City will have no obligation to maintain any insurance coverage.

(c) Special Conditions. The City's indemnity obligation to the Special Indemnified Parties under section (b) above is subject to the following conditions:

(1) The City will pay attorneys' fees and costs of a single law firm chosen by the Special Indemnified Parties to collectively represent the Special Indemnified Parties, and such counsel shall, to the extent consistent with the Special Indemnified Parties' interests, cooperate with the City and avoid duplication and wastefulness in the assertion of defenses;

(2) The City will pay attorneys' fees and costs of additional law firms to represent an individual Special Indemnified Party where (i) the counsel retained under (c)(1) above could not, as a result of applicable law or code of professional responsibility, assert a defense on behalf of such an individual Special Indemnified Party while simultaneously representing the other Special Indemnified Parties for reasons including, but not limited to, a situation in which the use of counsel chosen by the Special Indemnified Parties to represent the Special Indemnified Party or Parties would present such counsel with a conflict of interest, or in which the actual or potential defendants in, or targets of, any such action include the Special Indemnified Party or Parties, and the City and the Special Indemnified Party or Parties shall have reasonably concluded that there may be legal defenses available to it and/or other Special Indemnified Parties that are different from or additional to those available to the City; or (ii) the City otherwise authorizes the Special Indemnified Parties to employ separate counsel at the expense of the City; and

(3) The City will not, without the prior written consent of the Special Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in which indemnification or contribution may be sought hereunder (whether or not the Special Indemnified Parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each Special Indemnified Party from all liability arising out of such claim, action, suit or proceeding.



The provisions of this Article VIII shall survive the discharge of the City's obligations hereunder and under the Trust Agreement.

## ARTICLE IX

### EVENTS OF DEFAULT AND REMEDIES

Section 9.1. Events of Default. The following events shall be "Events of Default":

(a) Failure of the City to remit Program Receipts to the Trustee when required hereunder;

(b) Failure by the City to pay or cause to be paid in full any payment required hereunder when due, on a Repurchase Payment Date, on the Final Payment Date, or otherwise pursuant to the terms hereof; provided, however it shall not be a default hereunder if there is a failure to make such payments on a timely basis if such failure is caused solely by the insufficiency of Program Receipts so long as the City is not otherwise in default hereunder and any such payment is required to be made solely from Program Receipts;

(c) If any material representation or warranty made by the City herein or in the Certificate Purchase Agreement Contract or made by the City in any other document, instrument, or certificate furnished to the Trustee or the Corporation in connection with the execution and delivery of any Series of the Certificates shall at any time be shown to have been incorrect in any respect as of the time made;

(d) If the City shall fail to observe or perform any covenant, condition, agreement, or provision in this Agreement on its part to be observed or performed, other than as referred to in subsection (a), (b) or (c) of this Section, or shall breach any warranty by the City herein contained, for a period of 30 days after written notice, specifying such failure or breach and requesting that it be remedied, has been given to the City by the Corporation or the Trustee; except that, if such failure or breach can be remedied but not within such thirty (30) day period and if the City has taken all action reasonably possible to remedy such failure or breach within such 30 day period, such failure or breach shall not become an Event of Default for so long as the City shall diligently proceed to remedy the same in accordance with and subject to any directions or limitations of time established by the Trustee;

(e) Any proceeding under the United States Bankruptcy Code or any federal or state bankruptcy, insolvency, or similar law or any law providing for the appointment of a receiver, liquidator, trustee or similar official of the City or the Corporation or of all or substantially all of either the City's or the Corporation's assets, is instituted by or with the consent of the City or the Corporation, or is instituted without the City's or the Corporation's consent and is not permanently stayed or dismissed within sixty (60) days, or if the City or the Corporation offers to the City's or the Corporation's creditors to effect a composition or extension of time to pay the City's or the Corporation's debts or asks,

seeks or prays for a reorganization or to effect a plan of reorganization, or for a readjustment of the City's or the Corporation's debts, or if the City or Corporation shall make a general or any assignment for the benefit of the City's or the Corporation's creditors;

(f) Any assertion in any proceeding, forum or action by the City or on its behalf to the effect that performance of the City's obligations under this Agreement are unlawful or of the City's intention to disavow or repudiate any such obligations;

(g) If an Event of Default occurs under the Trust Agreement; or

(h) Any repeal or amendment of the Ordinance in violation of Section 6.18 hereof.

Section 9.2. Remedies on Default. In each and every such case during the continuance of such an Event of Default, the Corporation and the Trustee may, at their option, take whatever action, at law or in equity, as may appear necessary or desirable to collect the Program Receipts and to cause to be paid any other payments then due and thereafter to become due under this Agreement or to enforce the performance and observance of any obligation, covenant, agreement, or provision contained in this Agreement to be observed or performed by the City; it being understood that amounts payable by the City upon an Event of Default caused by the City shall not be limited to Program Receipts. The Original Purchaser may, in its sole discretion and without any liability for liquidated damages, terminate the Purchase Commitment upon the occurrence of an Event of Default.

Section 9.3. Remedies Not Exclusive; No Waiver of Rights. No remedy herein conferred upon or reserved to the Corporation or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy, to the extent permitted by law, shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise. In order to entitle the Corporation and the Trustee to exercise any remedy, to the extent permitted by law, reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be herein expressly required. Such rights and remedies as are given to the Corporation hereunder shall also extend to the Trustee, and the Trustee may exercise any rights and will be charged with the obligations of the Corporation under this Agreement, and the Trustee and the Certificate Holders shall be deemed third party beneficiaries of all covenants and conditions herein contained.

No delay in exercising or omitting to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient.

Section 9.4. Expenses on Default. In the event the City should default under any of the provisions of this Agreement and the Corporation or the Trustee should employ attorneys or incur other expenses of the collection of the payments due hereunder, the City agrees that it will

on demand therefor pay to the Corporation or the Trustee the reasonable fee of such attorneys and such other expenses so incurred by the Corporation or the Trustee.

Section 9.5. Notice of Default. The City agrees that as soon as is practicable, and in any event within 10 days after such event, the City will furnish the Trustee and the Corporation notice of any event that is an Event of Default, or that with the giving of notice or the passage of time or both could constitute an Event of Default, that has occurred and is continuing on the date of such notice, which notice shall set forth the nature of such event and the action that the City proposes to take with respect thereto. Upon having actual notice of the existence of an Event of Default, the Trustee shall serve written notice thereof upon the City (unless the City has expressly acknowledged the existence of such Event of Default in a writing delivered by the City to the Trustee or filed by the City in any court).

Section 9.6. Survival of Obligations. The City covenants and agrees with the Corporation that, until all obligations hereunder have been met and all obligations have been discharged in accordance with the Trust Agreement, its obligations hereunder shall survive the cancellation and termination of this Agreement, for any cause, and that the City shall continue to make all payments, and perform all other obligations provided for in this Agreement, all at the time or times provided in this Agreement. Notwithstanding the above, the provisions of Section 8.2 hereof shall survive the discharge of the City's obligations under the Trust Agreement.

## ARTICLE X

### MISCELLANEOUS

Section 10.1. Notices. All notices or communications herein required or permitted to be given shall be in writing mailed or delivered to it as follows:

- (i) If to the Corporation:

Lodi Financing Corporation  
c/o City of Lodi  
221 West Pine Street  
Lodi, California 95240  
Attention: President

- (ii) If to the City:

City of Lodi  
221 West Pine Street  
Lodi, California 95240  
Attention: City Attorney

(iii) If to the Trustee:

U.S. Bank Trust National Association  
One California Street, Suite 2550  
San Francisco, California 94111  
Attention: Corporate Trust Services  
Reference: Lodi Financing Corporation

(iv) If to the Calculation and Verification Agent:

Lehman Brothers Inc.  
3 World Financial Center  
Seventh Floor  
New York, New York 10285  
Attention: James Hraska

The Corporation, the City, the Trustee and the Calculation and Verification Agent may, by notice given hereunder, designate any further or different address to which subsequent notices, certificates and other communications shall be sent.

Section 10.2. Governing Law. This Agreement shall be construed in accordance with and governed by the Constitution and laws of the State of California.

Section 10.3. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Corporation, the City and their respective successors and assigns, including the Original Purchaser and any subsequent Certificate Holders subject, however, to the limitations contained herein.

Section 10.4. Severability of Invalid Provisions. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Agreement and such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. The Corporation and the City each hereby declares that they would have entered into this Agreement and each and every other section, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or phrases of this Agreement may be held illegal, invalid, or unenforceable.

Section 10.5. Article and Section Headings and References. The headings or titles of the several articles and sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, or effect of this Agreement. All references herein to "Articles," "Sections," and other subsections are to the corresponding articles, sections, or subsections of this Agreement; the words "herein," "hereof," "hereby," "hereunder," and other words of similar import refer to this Agreement as a whole and not to any particular article, section, or subsection hereof; and words of the masculine gender shall mean and include words of the feminine and neuter genders.

Section 10.6. Agreement Represents Complete Agreement; Amendments. This Agreement represents the entire contract between the parties hereto. This Agreement may not be effectively amended, changed, modified, altered, or terminated except by the written agreement of the Corporation and the City, given in accordance with the provisions of the Trust Agreement.

Section 10.7. Trustee Third Party Beneficiary. The Trustee is hereby designated a third party beneficiary hereunder for the purpose of enforcing any of the rights hereunder assigned to the Trustee. In accordance with Section 9.3 hereof, the Trustee and the Certificate Holders shall be deemed third party beneficiaries of all covenants and conditions contained herein.

Section 10.8. Waiver of Personal Liability. No governing body member, officer, agent, or employee of the Corporation or of the City shall be individually or personally liable for the payment of Repurchase Payments or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement; but nothing herein contained shall relieve any such governing body member, officer, agent, or employee from the performance of any official duty provided by law or by this Agreement.

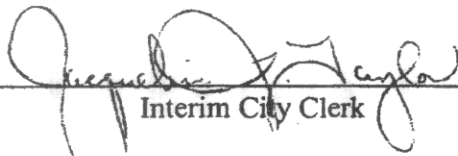
Section 10.9. Execution of Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the City and the Corporation have caused this Agreement to be executed in their respective corporate names, all as of the date first above written.

CITY OF LODI

By:   
City Manager

ATTEST:

  
Interim City Clerk

APPROVED AS TO FORM:

  
City Attorney

LODI FINANCING CORPORATION

By:   
Treasurer

ATTEST:

  
Acting Secretary

APPROVED AS TO FORM:

  
Corporation Counsel

## **EXHIBIT A**

### **PROGRAM DISBURSEMENT BUDGET**

The Program Disbursement Budget sets out the amount, timing and limitations for amounts to be deposited into the Program Account and consists of: (a) caps on disbursements for (i) professional fees of Outside Counsel ("Legal Fees") and (ii) "Ongoing Obligations," consisting of City reimbursement payments for previously made DTSC settlement payments for certain previously incurred response costs pursuant to Section 4.a of the Cooperative Agreement ("DTSC Settlement Payments"), computer document management, technical activities, project management and amounts invoiced by Outside Counsel for out-of-pocket direct expenses ("Legal Disbursements"), (b) a methodology for paying Legal Fees, (c) a methodology for reallocating budget items to provide flexibility for unforeseen events and (d) a methodology for handling Purchase Commitment reductions. Legal fees, Legal Disbursements, and all other costs incurred in connection with the Program prior to the Closing Date, except up to \$610,899 in DTSC Settlement Payments, are not included within this Program Disbursement Budget and shall not be paid from Certificate proceeds, Program Receipts or any other source until no Certificates are outstanding, the Purchase Commitment has ended or has been terminated and all other obligations under the Sale and Repurchase Agreement have been fully satisfied.

The City is required to submit the attached Quarterly Budget Reporting Form ("QBRF") to the Calculation and Verification Agent within 20 Business Days after the beginning of each calendar quarter (except the first quarter) to reconcile the prior quarter's expenditures with this Program Disbursement Budget and to demonstrate the City's compliance with this Program Disbursement Budget for the prior quarter. The City must submit an amended QBRF when invoices for services rendered during a quarter are received or paid after the filing of the QBRF for that quarter or when the Calculation and Verification Agent, in accordance with Section 6.11 of the Program Receipts Sale and Repurchase Agreement, dated as of June 1, 2000, (the "Sale and Repurchase Agreement") between the City of Lodi and the Lodi Financing Corporation, determines that the City's calculations were erroneous or that any disbursements were not in compliance with the Program Budget. If there are any ambiguities or discrepancies between the description of the Program Disbursement Budget in this Exhibit A and the QBRF, the latter will govern.

All capitalized terms used herein that are not otherwise defined shall have the meanings as set forth in the Sale and Repurchase Agreement.

(a) Disbursement Caps

Table I: Cumulative Disbursement Cap

Beginning of Quarter	Cumulative Disbursement Cap
1	\$ 1,500,000 <i>pd. at closing 6-29-00</i>
2	3,000,000
3	4,500,000
4	6,000,000
5	7,125,000
6	8,250,000
7	9,375,000
8	10,500,000
9	11,250,000
10	12,000,000
11	12,750,000
12	13,500,000
13	13,875,000
14	14,250,000
15	14,625,000
16	15,000,000

The maximum amount that may be transferred to the Program Account within the Municipal Fund from Certificate proceeds in each quarter is (x) the Cumulative Disbursement Cap for that quarter (from Table I) less (y) all amounts transferred previously.



**Table II: Program Budget for Ongoing Obligations**

<u>Beginning of Quarter</u>	<u>Cumulative Ongoing Obligations Cap</u>
1	\$922,250
2	1,842,600
3	2,761,100
4	3,679,600
5	4,250,150
6	4,820,700
7	5,384,800
8	5,948,900
9	6,203,000
10	6,457,100
11	6,711,200
12	6,968,350
13	7,096,950
14	7,225,550
15	7,354,150
16	7,482,750

The maximum amount that may be disbursed for Ongoing Obligations at any time is (x) the Cumulative Ongoing Obligations Cap for the quarter (from Table II) less (y) all amounts previously disbursed for Ongoing Obligations. However, additional funds may be reallocated from the Program Budget for Legal Fees in a given quarter to pay Ongoing Obligations in accordance with the reallocation provisions of this Exhibit A.

**Table III: Ongoing Obligations Payment Limits**

<b>Beginning of Quarter</b>	<b>DTSC Settlement</b>	<b>Computer Document Management</b>	<b>Technical Activities</b>	<b>Project Management</b>	<b>Legal Disbursements</b>
1	\$ 250,000	\$ 310,596	\$ 386,010	\$ 52,519	\$ 124,800
2	500,000	619,899	712,227	163,654	249,600
3	610,899	839,714	1,357,095	224,052	374,400
4	610,899	1,143,710	2,077,371	269,030	499,200
5	610,899	1,361,125	2,388,443	315,858	665,600
6	610,899	1,601,766	2,678,692	360,283	832,000
7	610,899	1,872,326	2,941,761	393,584	998,400
8	610,899	2,181,475	3,151,981	441,145	1,164,800
9	610,899	2,277,991	3,207,516	453,024	1,331,200
10	610,899	2,380,448	3,256,379	465,634	1,497,600
11	610,899	2,487,003	3,300,640	478,748	1,664,000
12	610,899	2,596,134	3,342,615	495,538	1,830,400
13	610,899	2,650,266	3,378,421	507,780	1,895,400
14	610,899	2,709,352	3,411,493	517,802	1,960,400
15	610,899	2,770,851	3,445,220	524,755	2,025,400
16	610,899	2,832,772	3,478,478	531,757	2,090,400

The amount disbursed for Ongoing Obligations may be used to pay for expenses in any of the sub-categories of Ongoing Obligations. However, each sub-category will have a maximum cumulative expenditure cap per quarter (from Table III), and Program monies may not be expended in excess of these sub-category caps unless (a) the City reallocates the difference from the Program Budget for Legal Fees in accordance with the reallocation provisions of this Exhibit A and; (b) the City, prior to exceeding the maximum cap in any quarter, provides written notice to the Trustee and receives approval from the Original Purchaser and the Certificate Holders of the change in the Ongoing Obligation sub-category maximum cumulative expenditure cap, as provided in Exhibit E. The DTSC Settlement Payments amounts may not be exceeded under any circumstances, however.

**Table IV: Program Budget for Legal Fees**

<b>Beginning of Quarter</b>	<b>Cumulative Legal Fee Cap</b>
1	\$ 577,750
2	1,157,400
3	1,738,900
4	2,320,400
5	2,874,850
6	3,429,300
7	3,990,200
8	4,551,100
9	5,047,000
10	5,542,900
11	6,038,800
12	6,531,650
13	6,778,050
14	7,024,450
15	7,270,850
16	7,517,250

The maximum amount that may be disbursed at any time to pay Legal Fees is (x) the amount specified in the Program Budget for Legal Fees for that quarter (from Table IV), less (y) all amounts previously disbursed for Legal Fees. However, additional funds may be reallocated from the Program Budget for Ongoing Obligations for a given quarter to pay Legal Fees in accordance with the reallocation provisions of this Exhibit A.

**(b) Legal Fee Payment Methodology**

Legal professional fees billed for services performed during a quarter will be paid subject to a three-tier methodology. As discussed more fully below, payments under Tier 1 and Tier 2 are made quarterly and are based on a percentage (90% and 30% respectively) of legal billings in a quarter subject to quarterly caps. Payments under Tier 3 are based on billings which exceed the amounts payable under Tier 1 and Tier 2 and are accumulated quarterly but paid only when and to the extent that excess funds are available. Invoices received after a quarter for services performed during that quarter must be compared to the caps in place for the quarter when services were performed. The Tiers are as follows:

- TIER 1** Fees billed for services performed in a quarter ("Quarterly Billings") subject to the Tier 1 Billings Cap (from Table V) for the quarter in which the services were performed, will be paid at 90% of the amounts billed.
- TIER 2** Quarterly Billings in excess of the Tier 1 Billings Cap (from Table V) subject to the Tier 2 Billings Cap (from Table V), for the quarter in which the services were performed will be paid at 30% of the amounts billed in excess of the Tier 1 Billings Cap.

**TIER 3** Certain Quarterly Billings which are not paid will qualify for accumulation under Tier 3. Tier 3 accumulated billings, as described below, will be paid only from either (a) amounts reallocated from Ongoing Obligations in accordance with the reallocation provisions of this Exhibit A, (b) amounts not utilized in the Legal Fee budget for payment of Tier 1 and Tier 2 billings, or (c) Program Receipts retained by the City as described in Section 6.4(e) of the Sale and Repurchase Agreement. Tier 3 accumulated billings are comprised of the following:

- (a) Quarterly Billings in excess of the Tier 1 Billings Cap (from Table V) subject to the Tier 2 Billings Cap (from Table V), for the quarter in which the services were performed which will be paid at 50% of the amounts billed in excess of the Tier 1 Billings Cap.
- (b) Quarterly Billings in excess of the Tier 2 Billings Cap (from Table V) for the quarter in which the services were performed which will be paid at 80% of the amounts billed in excess of the Tier 2 Billings Cap.
- (c) Quarterly Billings which qualify for payment under Tier 1 or Tier 2 (as described above) but are not paid due to insufficient funds within the Program Account.

**Table V: Legal Fee Tiers**

<u>Beginning of Quarter</u>	<u>Tier 1 Billings Cap<sup>(1)</sup></u>	<u>Tier 2 Billings Cap<sup>(2)</sup></u>
1	\$544,444	\$836,944
2	544,445	843,278
3	544,444	849,444
4	544,445	849,445
5	516,666	814,833
6	516,667	814,834
7	516,667	836,333
8	516,666	836,333
9	450,000	753,000
10	450,000	753,000
11	450,000	753,000
12	450,000	742,833
13	227,778	365,778
14	227,778	365,778
15	227,778	365,778
16	227,778	365,778

(1) As explained above, up to 90% of this amount may be paid.

(2) As explained above, up to 30% of the difference between the Tier 2 Billings Cap and the Tier 1 Billings Cap may be paid, and up to an additional 50% of that difference may accumulate in Tier 3.

**(c) Reallocation Between Legal Fees and Ongoing Obligations**

The City may choose to reallocate up to \$1.3 million from Legal Fees to Ongoing Obligations or vice versa in order to exceed the maximum disbursement limits within each of these categories or within the Ongoing Obligations sub-categories. The reallocation can take place during any quarter.

The reallocation of funds to the Legal Fee budget can only be used to pay the unpaid portion of Legal Fees accrued under Tier 3.

**(d) Purchase Commitment Reductions**

Under certain circumstances discussed in sections 6.4 and 6.5 of the Sale and Repurchase Agreement, the remaining Purchase Commitment of the Original Purchaser can be decreased. In these circumstances, the Disbursement Caps for all future quarters will be reduced by the amount of the Purchase Commitment decrease.

## Quarterly Budget Reporting Form

Filing Date: \_\_\_\_\_, \_\_\_\_\_  
Quarter Number: \_\_\_\_\_  
Quarter Beginning \_\_\_\_\_, \_\_\_\_\_  
and Ending \_\_\_\_\_, \_\_\_\_\_ (the "Reporting Period")

### **Definitions:**

The "Next Period" means the three-month period beginning on the day following the ending date of the Reporting Period.

The "Previous Period" means the three-month period (or part thereof in the case of the first period) ending on the day before the beginning date of the Reporting Period.

Other capitalized terms used below are defined either by the instructions and formulas to which they refer, or in the Program Receipts Sale and Repurchase Agreement dated as of [Dated Date] between the City of Lodi, as Seller and Repurchaser, and the Lodi Financing Corporation, as Purchaser (the "Sale and Repurchase Agreement").

**Note regarding Line References:** Numbers in parentheses refer to line numbers on this Quarterly Budget Reporting Form, except where numbers are followed by "P." A number followed by "P" refers to the line of the same number on the Quarterly Budget Reporting Form for the Previous Period. (e.g. (17P) refers to Line 17 of the Quarterly Budget Reporting Form for the Previous Period.)

**Calculation and Verification Agent Instructions:** Instructions for the Calculation and Verification Agent's use of this Form are specified by the letter code to the right of each line below. The actions corresponding to the letter codes are as follows:

L	No action on the part of the Calculation and Verification Agent is necessary; City of Lodi is responsible for accuracy of reported numbers.
M	The Calculation and Verification Agent should check correctness of mathematical calculations.
C	The Calculation and Verification Agent should check compliance according to italicized instructions.
V	The Calculation and Verification Agent should refer to appropriate table to check correctness of numbers.
F	If an Ongoing Obligation Payment Limit Increase Approval Form (an "Approval Form") has been submitted and approved, the Calculation and Verification Agent should compare each amount given on this form with its respective approved increase on the most recent Approval Form.

In accordance with Section 6.11 of the Sale and Repurchase Agreement, if this form contains any errors in calculation (Calculation and Verification Agent Instructions M, V, and F), the Calculation and Verification Agent must immediately notify the City of any corrections needed. The Calculation and Verification Agent must immediately notify the City, the Original Purchaser, other Certificate Holders and the Trustee if the City fails to comply with the Program Budget (Calculation and Verification Agent Instruction C).

	<u>Line</u>	<u>Instructions</u>
<b>A. <u>Reporting Period Expenditures</u></b>		
(1) Amount of Certificates issued during Reporting Period.	<u>(1)</u>	L
(2) Amount of Certificates issued during Next Period	<u>(2)</u>	L
<i>Lines (3) through (7) and Line (9) – Record the amounts expended for services performed during the Reporting Period for the following budget categories:</i>		
(3) DTSC Settlement Payments	<u>(3)</u>	L
(4) Computer Document Management	<u>(4)</u>	L
(5) Technical Activities	<u>(5)</u>	L
(6) Project Management	<u>(6)</u>	L
(7) Legal Disbursements	<u>(7)</u>	L
(8) <b>Total Ongoing Obligations</b> = Sum of Lines (3) through (7)	<u>(8)</u>	M
(9) Legal Fees	<u>(9)</u>	L
(10) Legal Fees expended for services performed before the Reporting Period (For first quarter, use 0)	<u>(10)</u>	L
(11) <b>Total Legal Fees</b> = (9) + (10)	<u>(11)</u>	M
<b>B. <u>Cumulative Expenditures</u></b>		
<i>Lines (12) through (16) and Line (18) – Compute the new Cumulative Expenditures by adding Reporting Period Expenditures to Previous Period's Cumulative Expenditures. For the first quarter, copy the Reporting Period Expenditures from Lines (3) through (9):</i>		
(12) DTSC Settlement = (3) + (12P)	<u>(12)</u>	M
(13) Computer Document Management = (4) + (13P)	<u>(13)</u>	M
(14) Technical Activities = (5) + (14P)	<u>(14)</u>	M
(15) Project Management = (6) + (15P)	<u>(15)</u>	M
(16) Legal Disbursements = (7) + (16P)	<u>(16)</u>	M
(17) <b>Total Ongoing Obligations</b> = Sum of Lines (12) through (16)	<u>(17)</u>	M
(18) Legal Fees = (11) + (18P)	<u>(18)</u>	M

		<u>Line</u>	<u>Instructions</u>
<b>C.</b>	<b><u>Purchase Commitment Reduction</u></b>		
(19)	Program Receipts deposited into the Program Account during the Reporting Period	<u>(19)</u>	L
(20)	Record the cash value, as determined by an Independent Consultant, of all non-cash settlements received during the Reporting Period in excess of the limits set forth in §6.6 of the Sale and Repurchase Agreement.	<u>(20)</u>	L
(21)	Record the amount of any Certificate payment by the City during the Reporting Period as a result of non-cash settlements pursuant to §6.6 (a) (i).	<u>(21)</u>	L
(22)	[(19) + (20) – (21)] <i>This is the Purchase Commitment Reduction for the Reporting Period.</i>	<u>(22)</u>	M
(23)	[(23P) – (1) – (22)] (For the first quarter, use \$15,000,000 in place of (23P).) <i>This is the Purchase Commitment for the Next Period</i>	<u>(23)</u>	M
(24)	[(1) + (24P)] (For the first quarter, use 0 in place of (24P).) <i>Total Certificate purchases through Reporting Period</i>	<u>(24)</u>	M
(25)	Referring to Table I, copy the Cumulative Disbursement Cap for the Next Period.	<u>(25)</u>	M
(26)	[(25) – (22) – (24)] <i>This is the maximum Certificate issuance amount for the Next Period. Line (2) must be less than or equal to this amount.</i>	<u>(26)</u>	M, C
<b>D.</b>	<b><u>Reallocation from Legal Fees to Ongoing Obligations:</u></b>		
(27)	Referring to Table II, copy the Cumulative Ongoing Obligations Cap for the Reporting Period.	<u>(27)</u>	V
(28)	[(17) – (27)] <i>If positive, this is the total amount reallocated to Ongoing Obligations. In accordance with Exhibit A of the Sale and Repurchase Agreement, this amount must be less than or equal to \$1,300,000.</i>	<u>(28)</u>	M, C
<b>E.</b>	<b><u>Reallocation from Ongoing Obligations to Legal Fees:</u></b>		
(29)	Referring to Table IV, copy the Cumulative Legal Fee Cap for the Reporting Period.	<u>(29)</u>	V
(30)	[(18) – (29)] <i>If positive, this is the total amount reallocated to Legal Fees. In accordance with Exhibit A of the Sale and Repurchase Agreement, this amount must be less than or equal to \$1,300,000.</i>	<u>(30)</u>	M, C



	<u>Line</u>	<u>Instructions</u>
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**F. Ongoing Obligation Subcategory Limits**

*Lines (31) through (35) – Ongoing Obligation Payment Limits – Referring to Table III, copy the Ongoing Obligation Payment Limits for the following subcategories for the Reporting Period:*

(31)	DTSC Settlement Payment	(31)	V
(32)	Computer Document Management	(32)	V
(33)	Technical Activities	(33)	V
(34)	Project Management	(34)	V
(35)	Legal Disbursements	(35)	V
(36)	Sum Lines (31) through (35).	(36)	M

*Lines (37) through (40) – Approved Increases in Subcategory Ongoing Obligation Payment Limits – Record any Ongoing Obligation Payment Limit increases that have been approved in writing by the Original Purchaser and Certificate Holders, and that are in effect as of the end of the Reporting Period:*

(37)	Computer Document Management	(37)	F
(38)	Technical Activities	(38)	F
(39)	Project Management	(39)	F
(40)	Legal Disbursements	(40)	F

*Lines (41) through (44) – Revised Ongoing Obligation Payment Limits – Add each Ongoing Obligation Payment Limit increase from Lines (37) through (40) to its respective Ongoing Obligation Payment Limit, recorded in Lines (31) through (35):*

(41)	Computer Document Management: [(32) + (37)]	(41)	M
(42)	Technical Activities: [(33) + (38)]	(42)	M
(43)	Project Management: [(34) + (39)]	(43)	M
(44)	Legal Disbursements: [(35) + (40)]	(44)	M

*Lines (45) through (49) – Payment in excess of Revised Ongoing Obligation Payment Limits:*

(45)	DTSC Settlement Payment: Greater of [(12) – (31)] or 0	(45)	M
(46)	Computer Document Management: Greater of [(13) – (41)] or 0	(46)	M
(47)	Technical Activities: Greater of [(14) – (42)] or 0	(47)	M
(48)	Project Management: Greater of [(15) – (43)] or 0	(48)	M
(49)	Legal Disbursements: Greater of [(16) – (44)] or 0	(49)	M
(50)	Sum (45) through (49). <i>In accordance with Exhibit A of the Sale and Repurchase Agreement, Line (50) must be zero.</i>	(50)	M, C

	<u>Line</u>	<u>Instructions</u>
<b>G.    <u>Legal Tier Structure</u></b>		
(51)    Legal Fee Expenditures: (9)	(51) _____	M
(52)    Amount paid for Legal Fees for services performed before the Reporting Period, for which bills were received after submission of the applicable Quarterly Budget Reporting Form. <i>If this amount is positive, please request the City to submit a revised Quarterly Budget Reporting Form for the period in which these legal services were performed and for all subsequent periods.</i>	(52) _____	C
(53)    [(51) – (52)]	(53) _____	M
(54)    Amount billed for Legal Fees for services performed in the Reporting Period.	(54) _____	L
<i>Lines (55) and (56) – Referring to Table V, copy the following items for the Reporting Period:</i>		
(55)    Tier 1 Billings Cap	(55) _____	V
(56)    Tier 2 Billings Cap	(56) _____	V
(57)    [(56) – (55)]	(57) _____	M
(58)    Lesser of (54) or (55).	(58) _____	M
(59)    [(58) x 90%] <i>This is the Tier 1 expenditure.</i>	(59) _____	M
(60)    Greater of [(54) – (55)] or 0	(60) _____	M
(61)    Lesser of (60) or (57)	(61) _____	M
(62)    [(61) x 30%] <i>This is the Tier 2 expenditure.</i>	(62) _____	M
<b><u>Tier 3 Accrual:</u></b>		
(63)    [(61) x 50%]	(63) _____	M
(64)    Greater of [(54) – (56)] or 0	(64) _____	M
(65)    [(64) x 80%]	(65) _____	M
(66)    [(59) + (62) + (63) + (65) – (53)] <i>This is the change in Tier 3 balance for the Reporting Period.</i>	(66) _____	M
(67)    [(67P) + (66)] (For the first quarter, use 0 in place of (67P).) <i>This is the Tier 3 balance.</i>	(67) _____	M
<b>H.    <u>Permitted Deductions</u></b>		
<b>DTSC Reserve</b>		
(68)    [(71P)] (For the first quarter, use 0 in place of (71P).)	(68) _____	M
(69)    Additions to DTSC Reserve during Reporting Period	(69) _____	L
(70)    Payments to DTSC during Reporting Period	(70) _____	L

	<u>Line</u>	<u>Instructions</u>
(71) [(68) + (69) – (70)] <i>DTSC Reserve balance at end of Reporting Period. By the definition of Permitted Deductions in the Sale and Repurchase Agreement, Line (71) must be less than or equal to \$300,000.</i>	(71) _____	M, C
<b>City Reimbursement</b>		
(72) [(74P)] (For the first quarter, use 0 in place of (74P).)	(72) _____	M
(73) Amount paid to City during Reporting Period to reimburse for prior expenditures	(73) _____	L
(74) [(72) + (73)] <i>By the definition of Permitted Deductions in the Sale and Repurchase Agreement, Line (74) must be less than or equal to \$2,000,000.</i>	(74) _____	M, C

**Quarterly Budget Reporting Form – Table I**

**Cumulative Disbursement Caps**

<b>Quarter</b>	<b>Cumulative Disbursement Cap</b>
1	\$ 1,500,000
2	3,000,000
3	4,500,000
4	6,000,000
5	7,125,000
6	8,250,000
7	9,375,000
8	10,500,000
9	11,250,000
10	12,000,000
11	12,750,000
12	13,500,000
13	13,875,000
14	14,250,000
15	14,625,000
16	15,000,000

**Quarterly Budget Reporting Form – Table II**

**Cumulative Ongoing Obligations Caps**

<u>Quarter</u>	<u>Cumulative Ongoing Obligations Cap</u>
1	\$ 922,250
2	1,842,600
3	2,761,100
4	3,679,600
5	4,250,150
6	4,820,700
7	5,384,800
8	5,948,900
9	6,203,000
10	6,457,100
11	6,711,200
12	6,968,350
13	7,096,950
14	7,225,550
15	7,354,150
16	7,482,750

**Quarterly Budget Reporting Form – Table III**

**Ongoing Obligation Payment Limits**

<b>Quarter</b>	<b>DTSC Settlement</b>	<b>Computer Document Management</b>	<b>Technical Activities</b>	<b>Project Management</b>	<b>Legal Disbursements</b>
1	\$250,000	\$ 310,596	\$ 386,010	\$ 52,519	\$ 124,800
2	500,000	619,899	712,227	163,654	249,600
3	610,899	839,714	1,357,095	224,052	374,400
4	610,899	1,143,710	2,077,371	269,030	499,200
5	610,899	1,361,125	2,388,443	315,858	665,600
6	610,899	1,601,766	2,678,692	360,283	832,000
7	610,899	1,872,326	2,941,761	393,584	998,400
8	610,899	2,181,475	3,151,981	441,145	1,164,800
9	610,899	2,277,991	3,207,516	453,024	1,331,200
10	610,899	2,380,448	3,256,379	465,634	1,497,600
11	610,899	2,487,003	3,300,640	478,748	1,664,000
12	610,899	2,596,134	3,342,615	495,538	1,830,400
13	610,899	2,650,266	3,378,421	507,780	1,895,400
14	610,899	2,709,352	3,411,493	517,802	1,960,400
15	610,899	2,770,851	3,445,220	524,755	2,025,400
16	610,899	2,832,772	3,478,478	531,757	2,090,400

**Quarterly Budget Reporting Form – Table IV**

**Cumulative Legal Fee Caps**

<b>Quarter</b>	<b>Cumulative Legal Fee Cap</b>
1	\$ 577,750
2	1,157,400
3	1,738,900
4	2,320,400
5	2,874,850
6	3,429,300
7	3,990,200
8	4,551,100
9	5,047,000
10	5,542,900
11	6,038,800
12	6,531,650
13	6,778,050
14	7,024,450
15	7,270,850
16	7,517,250

Quarterly Budget Reporting Form – Table V

Legal Fee Tiers

<u>Quarter</u>	<u>Tier 1 Billings Cap</u>	<u>Tier 2 Billings Cap</u>
1	\$544,444	\$836,944
2	544,445	843,278
3	544,444	849,444
4	544,445	849,445
5	516,666	814,833
6	516,667	814,834
7	516,667	836,333
8	516,666	836,333
9	450,000	753,000
10	450,000	753,000
11	450,000	753,000
12	450,000	742,833
13	227,778	365,778
14	227,778	365,778
15	227,778	365,778
16	227,778	365,778



**EXHIBIT B**

**[FORM OF ISSUANCE REQUEST]**

**REQUEST AND CERTIFICATE OF THE CITY**

**LODI FINANCING CORPORATION  
(ENVIRONMENTAL ABATEMENT PROGRAM)  
VARIABLE RATE CERTIFICATES OF PARTICIPATION**

To: U.S. Bank Trust National Association  
Corporate Trust Services  
One California Street, Suite 2550  
San Francisco, CA 94111

Attention: \_\_\_\_\_  
Relationship Specialist

The City of Lodi, California (the "City") hereby requests and directs the Trustee, on behalf of the Lodi Financing Corporation (the "Corporation"), to execute and deliver \$\_\_\_\_\_ of the Corporation's Variable Rate Certificates of Participation ("Certificates") (Environmental Abatement Program), Series \_\_\_\_ to [Purchaser] on \_\_\_\_\_ [Delivery Date].

We, the City Attorney and Finance Director [City Manager], respectively, of the City, hereby certify as follows:

1. The representations and warranties of the City contained in (a) the Certificate Purchase Contract, dated June 28, 2000 (the "Certificate Purchase Contract"), among the City, the Corporation and Lehman Brothers Inc. with respect to the sale, execution, and delivery of not to exceed \$16,000,000 aggregate principal amount of the Certificates and (b) the Program Receipts Sale and Repurchase Agreement, dated as of June 1, 2000 (the "Sale and Repurchase Agreement") between the City and the Corporation are true and correct in all material respects on and as of the date hereof as if made on this date.

2. There is no action, suit, proceeding, inquiry, or investigation, at law or in equity before or by any court, government agency, public board, or body, pending or, to the best of our knowledge, threatened against the City, affecting the existence of the City or the titles of its officers to their respective offices, or affecting or seeking to prohibit, restrain, or enjoin the sale, execution, or delivery of the Certificates or the collection of the Program Receipts (as defined in the Sale and Repurchase Agreement) to be used to pay the principal and interest components of the Certificates, or the pledge of funds and accounts pursuant to the Trust Agreement (as defined in the Sale and Repurchase Agreement), or contesting the powers of the Trustee thereunder with respect to the execution of the Certificates; nor are we aware of any circumstance not disclosed in writing to the Purchaser prior to the date of this Request and Certificate that would form a basis for any such action, suit, proceeding, inquiry, or investigation, wherein an unfavorable decision, ruling, or finding would materially adversely affect the authorization, execution,

delivery, or performance by the City of the obligations on its part contained in the Program Documents, as defined in the Certificate Purchase Contract.

3. After investigation and review of the Program Documents, no event of default, nor any event which, after the passage of time or the giving of notice would constitute an event of default under a Program Document has occurred and is continuing.

4. The City has complied with all the agreements and satisfied all the conditions on its part to be performed or satisfied at or prior to the date hereof pursuant to the Program Documents, including compliance with the Program Budget and including any reallocation of amounts therein.

5. The City represents that it will use the proceeds of this issuance in conformance with the Program Budget set forth in Exhibit A to the Sale and Repurchase Agreement. The principal amount of Certificates to be executed and delivered hereunder does not exceed the Cumulative Disbursement Cap for the calendar quarter immediately following the Delivery Date, as set forth in the Program Budget, less the principal amount of any Certificates previously executed and delivered.

6. Between the date of the Certificate Purchase Contract and the date hereof, the City has not, without the prior written consent of the Original Purchaser, together with such other Certificate Holders as are necessary to constitute, in the aggregate, at least 51% of outstanding Accreted Value, offered or issued any bonds, notes, or other obligations for borrowed money, or incurred any material liabilities, direct or contingent, payable from Program Receipts.

7. All capitalized terms used herein that are not otherwise defined shall have the same meanings as in the Certificate Purchase Contract and the Sale and Repurchase Agreement.

8. The City hereby requests and directs the Trustee, after the Trustee's review of this Request and Certificate, to deliver a copy of this Request and Certificate to the Purchaser under the Certificate Purchase Contract at least 10 Business Days prior to the Delivery Date.

**[Date]**

CITY OF LODI

By: \_\_\_\_\_  
[Name]  
[City Attorney]

By: \_\_\_\_\_  
[Name]  
[City Manager or Finance Director]

## EXHIBIT C

### [FORM OF REMITTANCE REPORT]

#### NOTICE OF REMITTANCE OF PROGRAM RECEIPTS

U.S. Bank Trust National Association  
Corporate Trust Services  
One California Street, Suite 2550  
San Francisco, CA 94111

Attention: \_\_\_\_\_  
*Relationship Specialist*

Pursuant to Sections 6.4 and 6.11 of the Program Receipts Sale and Repurchase Agreement, dated as of June 1, 2000 (the "Sale and Repurchase Agreement") between the City of Lodi, California (the "City") and the Lodi Financing Corporation (the "Corporation"), the City hereby notifies, certifies and warrants to you, as Trustee, that it has received Program Receipts (in the amounts and from the sources described below) and is remitting such moneys (net of deductions described below) to you in compliance with said Sections 6.4 and 6.11:

Total amount of Program Receipts received: \$ \_\_\_\_\_

Date received: \_\_\_\_\_ ("Receipt Date")

Source(s) of Program Receipts (including caption of action and moneys received from insurers or other payors; riders attached as necessary):

Caption: \_\_\_\_\_

Payor: \_\_\_\_\_

- |  |           |
|--|-----------|
| (1) Total amount of Program Receipts received:   | (1) _____ |
| (2) Amount of Program Receipts available for Permitted Deductions: (1) x 25%               | (2) _____ |
| (3) DTSC Reserve balance as of Receipt Date:   | (3) _____ |
| (4) Amount of Program Receipts applied to DTSC Reserve: Lesser of (2) or [\$300,000 - (3)] | (4) _____ |
| (5) Amount of Program Receipts available for City reimbursement: (2) - (4)                 | (5) _____ |
| (6) Total City reimbursement as of Receipt Date:   | (6) _____ |

- (7) Amount of Program Receipts applied to City reimbursement:  
Lesser of (5) or [ $\$2,000,000 - (6)$ ] (7) \_\_\_\_\_
- (8) Total amount of Program Receipts applied to Permitted  
Deductions:  $(4) + (7)$  (8) \_\_\_\_\_
- (9) Amount of Program Receipts remaining after Permitted  
Deductions:  $(1) - (8)$  (9) \_\_\_\_\_
- (10) Deferred Commitment Fee Reserve Account Balance as of  
the Receipt Date (Obtain from Calculation and Verification  
Agent) (10) \_\_\_\_\_
- (11) Amount required to pay Accreted Value and Current Interest  
on Certificates as of the Receipt Date: (11) \_\_\_\_\_
- (12) Amount required to pay Current Interest and Compounded  
Interest on Certificates as of the Receipt Date: (12) \_\_\_\_\_
- (13) Payment of Current Interest and Compounded Interest from  
funds in Deferred Commitment Fee Reserve Account:  
Lesser of (10) or (11) (13) \_\_\_\_\_
- (14) Amount required to pay Accreted Value and Current Interest  
after payment from funds in Deferred commitment Fee  
Reserve Account:  $(11) - (13)$  (14) \_\_\_\_\_
- (15) Amount of Program Receipts remitted to Trustee from  
Recovery Account to pay Accreted Value and Current  
Interest on Certificates: Lesser of (9) or (14) (15) \_\_\_\_\_
- (16) Amount required to fund Deferred Commitment Fee Reserve  
Account after payment of Current and Compounded Interest  
under (15): (16) \_\_\_\_\_
- (17) Amount of Program Receipts remitted to Trustee from  
Recovery Account to fund Deferred Commitment Fee  
Reserve Account: Lesser of  $[(9) - (15)]$  or (16) (17) \_\_\_\_\_
- (18) Total Amount of Program Receipts remitted to Trustee from  
Recovery Account:  $(15) + (17)$  (18) \_\_\_\_\_
- (19) Amount of Program Receipts permitted to be transferred  
from the Recovery Account to the Program Account:  
 $(9) - (18)$  (19) \_\_\_\_\_

The undersigned hereby certifies that this remittance is in compliance with Sections 6.4 and 6.11 of the Sale and Repurchase Agreement. The Trustee is hereby directed to return to the undersigned any amounts which the Calculation and Verification Agent determines to be in excess

of the amounts required to be transmitted to the Trustee under Section 6.4(a) of the Sale and Repurchase Agreement.

All capitalized terms used herein that are not otherwise defined shall have the same meanings as in the Sale and Repurchase Agreement.

CITY OF LODI

By: \_\_\_\_\_  
[Name]  
[Title]

cc: Calculation and Verification Agent  
Original Purchaser

**EXHIBIT D**

**[FORM OF NOTICE OF REALLOCATION]**

**REALLOCATION NOTICE  
REGARDING AMOUNTS IN PROGRAM ACCOUNT**

U.S. Bank Trust National Association  
Corporate Trust Services  
One California Street, Suite 2550  
San Francisco, CA 94111

Attention: \_\_\_\_\_  
*Relationship Specialist*

Dear \_\_\_\_\_:

Pursuant to Section 6.12 of the Program Receipts Sale and Repurchase Agreement, dated as of June 1, 2000 (the "Sale and Repurchase Agreement") between the City of Lodi, California (the "City") and the Lodi Financing Corporation (the "Corporation"), the City hereby notifies you of the following reallocation of moneys in the Program Account.

Reallocation as of \_\_\_\_\_

Total amount reallocated by budget category (Legal Fees or Ongoing Obligations ) in current quarter:

\$ \_\_\_\_\_ reallocated from \_\_\_\_\_ to \_\_\_\_\_  
(budget category)

If moneys reallocated from Ongoing Obligations to Legal Fees, total percentage of accrued billings after closing in comparison to total billings after closing:

Accrued billings to date: \$ \_\_\_\_\_

Total billings to date: \$ \_\_\_\_\_

\_\_\_\_\_ %

If moneys reallocated from Legal Fees to Ongoing Obligations, total percentage of cumulative expenditures in comparison with the Ongoing Obligation Payment Limit for the applicable quarter (from Table III of the Quarterly Budget Reporting Form) for the subcategory to which moneys would be reallocated (i.e., Computer Document Management, Technical Activities, Project Management, or Legal Disbursements):

Ongoing obligation category: \_\_\_\_\_

Subcategory expenditures to date: \$ \_\_\_\_\_

Ongoing Obligation Payment Limit for subcategory: \$ \_\_\_\_\_

\_\_\_\_\_ %

A written explanation of the reason for this reallocation is attached to this Reallocation Notice.

The undersigned hereby certifies that this notice of reallocation is in conformance with Section 6.11 and Exhibit A (the Program Budget) of the Sale and Repurchase Agreement, and that any moneys so reallocated will be used exclusively for purposes permitted under the Sale and Repurchase Agreement and Program Budget.

You are hereby instructed to deliver a copy of this Reallocation Notice to the Original Purchaser, all other Certificate Holders, and the Calculation and Verification Agent within 5 Business Days after your receipt hereof.

Capitalized terms used herein not otherwise defined shall have the meaning set forth in the Sale and Repurchase Agreement.

CITY OF LODI

By: \_\_\_\_\_  
[Name]  
[Title]

## EXHIBIT E

### ONGOING OBLIGATION PAYMENT LIMIT INCREASE APPROVAL FORM

Filing Date: \_\_\_\_\_, \_\_\_\_\_

Limit Increase to Take Effect the Quarter Beginning \_\_\_\_\_, \_\_\_\_\_

U.S. Bank Trust National Association  
Corporate Trust Services  
One California Street, Suite 2550  
San Francisco, CA 94111

Attention: \_\_\_\_\_  
*Relationship Specialist*

Pursuant to Section 6.12 of the Program Receipts Sale and Repurchase Agreement, dated as of June 1, 2000 (the "Sale and Repurchase Agreement") between the City of Lodi, California (the "City") and the Lodi Financing Corporation, the City hereby requests the following increase(s) to the Ongoing Obligation Payment Limits set forth in Exhibit A of the Sale and Repurchase Agreement, and instructs you, as Trustee, to forward a copy of this Ongoing Obligation Payment Limit Increase Approval Form (the "Approval Form") to the Original Purchaser (as defined in the Sale and Repurchase Agreement) and all other Certificate Holders within 5 Business Days after your receipt hereof and to ascertain within 5 Business Days after the receipt of such transmittal whether the Original Purchaser, together with such other Certificate Holders as are necessary to constitute, in the aggregate, at least 51% of outstanding Accreted Value, approves or denies this request. Upon such determination, you are instructed to inform the City, the Calculation and Verification Agent, the Original Purchaser and the other Certificate Holders of the response.

Subcategory	Cumulative Maximum for Quarter	Expected Expenditure	Amount Exceeding Maximum
Computer Document Management			
Technical Activities			
Project Management			
Legal Disbursements			



**Explanation**

CITY OF LODI

By: \_\_\_\_\_  
[Name]  
[Title]

**TRUSTEE'S REPORT TO THE CITY**

We have forwarded a copy of the Approval Form to the Original Purchaser and Certificate Holders on \_\_\_\_\_, and the Original Purchaser and Certificate Holders have responded to this request as follows:

\_\_\_\_\_ The Original Purchaser, together with such other Certificate Holders as are necessary to constitute, in the aggregate, at least 51% of outstanding Accreted Value, approves the Ongoing Obligation Payment Limit increase(s) requested on the Approval Form.

\_\_\_\_\_ The Original Purchaser, together with such other Certificate Holders as are necessary to constitute, in the aggregate, at least 51% of outstanding Accreted Value, approves the Ongoing Obligation Payment Limit increase(s) requested on the Approval Form, with the following exceptions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ The Original Purchaser, together with such other Certificate Holders as are necessary to constitute, in the aggregate, at least 51% of outstanding Accreted Value, does not approve any Ongoing Obligation Payment Limit increase(s) requested on the Approval Form.

\_\_\_\_\_ The Original Purchaser, together with such other Certificate Holders as are necessary to constitute, in the aggregate, at least 51% of outstanding Accreted Value, has not responded within 5 Business Days after receipt of our transmittal of the Approval From to them and, in accordance with Section 6.11 of the Sale and Repurchase Agreement, are deemed to have denied the requested increase(s).

U.S. BANK TRUST NATIONAL ASSOCIATION

By: \_\_\_\_\_

[Name]

Trustee

Date: \_\_\_\_\_

cc: Calculation and Verification Agent  
Original Purchaser and other Certificate Holders

**EXHIBIT F**

**[FORM OF TERMINATION NOTICE]**

**LODI FINANCING CORPORATION  
(ENVIRONMENTAL ABATEMENT PROGRAM)  
VARIABLE RATE CERTIFICATES OF PARTICIPATION**

U.S. Bank Trust National Association  
Corporate Trust Services  
One California Street, Suite 2550  
San Francisco, CA 94111

Attention: \_\_\_\_\_

Relationship Specialist

1. Pursuant to the Certificate Purchase Contract, dated June 28, 2000 (the "Certificate Purchase Contract"), among the City of Lodi, California (the "City"), the Lodi Financing Corporation (the "Corporation") and Lehman Brothers Inc., the City hereby certifies, represents and warrants that it will make no additional Issuance Requests to the Trustee and is hereby irrevocably and permanently discontinuing all Issuance Requests.

Last Issuance Request made on: \_\_\_\_\_

Last Issuance Request amount: \_\_\_\_\_

Date of Delivery of Certificates under last Issuance Request:

2. The undersigned hereby certifies that this Notice is in compliance with the Certificate Purchase Agreement and the Program Receipts Sale and Repurchase Agreement, dated as of June 1, 2000, between the City and the Corporation (the "Sale and Repurchase Agreement").

3. All capitalized terms used herein that are not otherwise defined shall have the same meanings as in the Certificate Purchase Contract and the Sale and Repurchase Agreement.

4. The City has delivered a copy of this Termination Notice to the Purchaser under the Certificate Purchase Contract and to the Calculation and Verification Agent.

CITY OF LODI

By: \_\_\_\_\_  
[Name]  
[Title]

cc: Original Purchaser  
Calculation and Verification Agent

# Certificate Purchase Contract

Part #2.

Lodi Financing Corporation  
Not to Exceed \$16,000,000  
Aggregate Principal Amount of  
Variable Rate Certificates of Participation  
(Environmental Abatement Program)

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CERTIFICATE PURCHASE CONTRACT

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June 28, 2000

City of Lodi  
221 West Pine Street  
Lodi, California 95240

Lodi Financing Corporation  
221 West Pine Street  
Lodi, California 95240

Ladies and Gentlemen:

The undersigned (the "Purchaser") offers to enter into this Certificate Purchase Contract (the "Purchase Contract") with the City of Lodi, California (the "City") and the Lodi Financing Corporation (the "Corporation") which, upon the City's and the Corporation's acceptance of this offer, will be binding upon the City and the Corporation and upon the Purchaser. This offer is made subject to the City's and the Corporation's written acceptance hereof on or before 5:00 P.M., San Francisco time, on the date hereof or such other time as the parties hereto mutually agree upon and, if not so accepted, will be subject to withdrawal by the Purchaser upon written notice (by facsimile or otherwise) delivered to the City and the Corporation at any time prior to the acceptance hereof by the City and the Corporation.

Capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Sale and Repurchase Agreement (hereinafter defined).

1. Purchase and Sale. Upon the terms and conditions and upon the basis of the representations, warranties, and agreements set forth herein, the Purchaser hereby agrees to purchase, and the City and the Corporation hereby agree to cause the sale, execution, and delivery to the Purchaser of, not to exceed \$16,000,000 aggregate principal amount (the

"Purchase Commitment") of Variable Rate Certificates of Participation (Environmental Abatement Program) (the "Certificates") evidencing and representing interests of the owners thereof in the Repurchase Payments to be made by the City under the Program Receipts Sale and Repurchase Agreement, dated as of June 1, 2000 (the "Sale and Repurchase Agreement"), by and between the City and the Corporation.

Under the provisions of the Sale and Repurchase Agreement, the City will irrevocably sell and convey to the Corporation its right to receive amounts, proceeds and recoveries from, or in contemplation of, or in connection with, the potential liability of responsible parties or potentially responsible parties, their insurers or indemnitors, or of tortfeasors or potential tortfeasors, their insurers or indemnitors ("Program Receipts") received by the City in connection with its Environmental Abatement Program (the "Program"), as described in the Sale and Repurchase Agreement and in the City's Ordinance No. 1684 (the "Ordinance"), adopted November 17, 1999 and effective December 17, 1999, repealing and reenacting its Comprehensive Municipal Environmental Response and Liability Ordinance, Title 8, Chapter 8.24 of the Lodi Municipal Code, and the Corporation will irrevocably resell and reconvey undivided interests in the Program Receipts in consideration of the payment by the City of the Repurchase Payments under the Sale and Repurchase Agreement.

The Certificates shall be executed and delivered in Series from time to time pursuant to a Trust Agreement, dated as of June 1, 2000 (the "Trust Agreement"), by and among the Corporation and U.S. Bank National Trust Association, as trustee (the "Trustee"), and shall represent undivided proportionate interests in the Corporation's right to receive Repurchase Payments under the Sale and Repurchase Agreement. The City's obligation to make Repurchase Payments under the Sale and Repurchase Agreement is a limited obligation of the City, payable solely from Program Receipts. The City has authorized the execution of this Purchase Contract, the Sale and Repurchase Agreement, and a Placement Agent Agreement, dated June 28, 2000 (the "Placement Agent Agreement") between the City and Lehman Brothers Inc., as Placement Agent, as well as related matters, pursuant to the terms of Resolution No. 99-180, adopted by the City Council of the City on November 3, 1999 (the "City Resolution"). The Corporation has authorized the execution of this Purchase Contract, the Sale and Repurchase Agreement, the Trust Agreement and the Placement Agent Agreement, as well as related matters, pursuant to the terms of Resolution No. LFC-4 adopted by the Board of Directors of the Corporation on November 3, 1999 (the "Corporation Resolution").

The City is committed to act as lead agency in initiating and prosecuting environmental enforcement actions constituting the Program pursuant to a Comprehensive Joint Cooperative Agreement executed in May 1997 (the "Cooperative Agreement") by and between the City and the California Environmental Protection Agency, Department of Toxic Substances Control ("DTSC"). In connection with its pursuit of the Program, the City has entered into a Professional Services Agreement and Scope of Services Statement, dated December 1, 1999 (the "Professional Services Agreement") with Envision Law Group (the "Outside Counsel").

This Purchase Contract, the Sale and Repurchase Agreement, the Trust Agreement, the Placement Agent Agreement and the Professional Services Agreement are collectively referred to herein as the "Legal Documents." The Legal Documents, together with the Cooperative

Agreement, the Ordinance, the City Resolution and the Corporation Resolution, are herein referred to as the "Program Documents."

The initial Series of the Certificates shall be executed and delivered on June 29, 2000 in the aggregate principal amount of \$2,500,000. Each subsequent Series of the Certificates shall be executed and delivered on the applicable Delivery Date (as defined in the Sale and Repurchase Agreement) and in the aggregate principal amount specified by the City in an Issuance Request (as defined in the Sale and Repurchase Agreement and in substantially the form attached hereto as Exhibit F) submitted by the City in accordance with the terms of the Trust Agreement. The maximum principal amount of Certificates that may be executed and delivered on any Delivery Date is an amount equal to the Cumulative Disbursement Cap for the immediately succeeding calendar quarter (as set forth in Exhibit A to the Sale and Repurchase Agreement), less any principal amount of Certificates previously executed and delivered. The purchase price for each Series of the Certificates shall be equal to the aggregate principal amount of such Series of the Certificates, and no Series of Certificates will be executed and delivered in an aggregate amount of less than \$250,000. No Delivery Date shall occur after the "Commitment Period Ending Date," which shall be four years after the initial Closing Date.

If the City has determined to permanently and irrevocably discontinue Issuance Requests, it shall deliver to the Trustee a Termination Notice (as defined in the Sale and Repurchase Agreement and in substantially the form attached hereto as Exhibit E) in accordance with the terms of the Trust Agreement.

2. Purchase Commitment and Commitment Period. On the first Business Day of each January, April, July and October, beginning October 2000, and prior to the Commitment Period Ending Date, the Purchaser shall purchase a Series of Certificates in an amount, if any, specified by the Trustee upon acceptance of an Issuance Request received from the City as provided in the Trust Agreement. The Purchase Commitment shall be reduced, dollar for dollar, without further action on the part of the Purchaser, by 1) the principal amount of Certificates executed and delivered under the Trust Agreement and 2) the City's receipt of Program Receipts, whether cash or non-cash, and whether or not there are any Certificates Outstanding at the time, in an amount up to the full amount of the Purchase Commitment, including but not limited to (i) the City's retention of Program Receipts as provided in Section 6.4(e) of the Sale and Repurchase Agreement and (ii) the value of non-cash settlements accepted by the City as provided in Section 6.6(a) of the Sale and Repurchase Agreement.

The Purchase Commitment shall terminate on the earlier of the Commitment Period Ending Date or the occurrence of any of the following "Commitment Termination Events:" 1) the City's delivery of a Termination Notice to the Trustee and the Original Purchaser, in substantially the form attached hereto as Exhibit G, stating that it will make no further Issuance Requests, 2) the reduction of the Purchase Commitment to zero by one or more of the events described in the preceding paragraph, 3) the Original Purchaser's decision to terminate the Purchase Commitment, in accordance with Section 6.5 of the Sale and Repurchase Agreement, if the City substitutes its Outside Counsel or modifies the terms of engagement of its Outside Counsel in a manner which, in the sole determination of the Original Purchaser, results in a materially prejudicial change; or 4) in the sole discretion of the Original Purchaser, an uncured Event of Default under the Sale and Repurchase Agreement or under the Trust Agreement, or a

violation by the City or the Corporation of any covenant, representation or warranty made herein, in the Sale and Repurchase Agreement or in the Trust Agreement, including but not limited to the occurrence of any of the proceedings or actions described in Section 9.1(e) of the Sale and Repurchase Agreement relating to bankruptcy or insolvency of the City or the Corporation or other actions described therein. The City may terminate the Purchase Commitment in whole or in part, at any time, provided that such termination will in no way diminish the City's obligation to pay the Deferred Commitment Fee or the Outstanding Certificate Obligations of all Certificates.

3. Deferred Commitment Fee. The City shall pay to the Original Purchaser, in consideration for its commitment hereunder to purchase the Certificates from time to time and to assume the substantial risks attendant thereto, a deferred commitment fee equal to \$2.25 million (the "Deferred Commitment Fee"). The Deferred Commitment Fee shall be due and payable on the date on which all of the Certificates are paid in full or discharged in accordance with the Trust Agreement, and if such date is prior to the Commitment Period Ending Date, a Commitment Termination Event (as defined in Section 2 above and in the Sale and Repurchase Agreement) has occurred. The Deferred Commitment Fee shall be equal to the difference between \$2.25 million and the cumulative portion of Repurchase Payments representing interest (including Compounded Interest and Current Interest) paid with respect to the Certificates on or prior to such date as the Deferred Commitment fee is due; thus the Deferred Commitment Fee will be reduced dollar for dollar for each dollar of interest paid with respect to the Certificates. The Deferred Commitment Fee shall be payable in accordance with Sections 6.4(d) and 6.9 of the Sale and Repurchase Agreement and Sections 5.03 and 5.04 of the Trust Agreement (it being understood and agreed that the Original Purchaser shall be an express third party beneficiary of the agreements and covenants made by the Corporation under the Trust Agreement), and the sole source of payment of such Deferred Commitment Fee shall be Program Receipts.

A Deferred Commitment Fee Reserve Account shall be established and maintained by the Trustee under the Trust Agreement from Program Receipts, in an amount which, after payment of Accreted Value and Current Interest components on all Outstanding Certificates when due, equals the then current Deferred Commitment Fee.

The City acknowledges and agrees that the City's obligation to pay the Deferred Commitment Fee shall survive the payment of the Certificates or termination of the Purchase Commitment. The Deferred Commitment Fee shall be payable to the Original Purchaser executing this Purchase Contract irrespective of the fact that the Original Purchaser may have sold or transferred its ownership interest in all or a portion of the Certificates by the time the payment of the Deferred Commitment Fee so made hereunder and under the Trust Agreement.

4. Closing. At 8:00 a.m., San Francisco time, on June 29, 2000 (the "Closing Date"), and at 8:00 a.m., San Francisco time, on each Delivery Date thereafter with respect to which the City has submitted an Issuance Request, the City, subject to the terms and conditions hereof, will cause the sale and delivery of the applicable Series of the Certificates to the Purchaser, duly executed, together with the other documents hereinafter mentioned, and, subject to the terms and conditions hereof, the Purchaser will accept such delivery and pay the purchase price of such Series of the Certificates as set forth in Section 1 hereof by wire transfer of immediately available funds. Such delivery and payment on the Closing Date is referred to



herein as the "Initial Closing," such delivery and payment on each subsequent Delivery Date is referred to herein as a "Subsequent Closing," and the Initial Closing or any Subsequent Closing is referred to herein as a "Closing." Delivery and payment as aforesaid shall be made at the offices of the City, 221 West Pine Street, Lodi, California, or at such other place as shall have been mutually agreed upon by the City and the Purchaser.

5. The Certificates. The Certificates of each Series shall be dated the date of delivery thereof, shall have a Final Payment Date of January 1, 2029, and shall evidence and represent an undivided proportional interest in Repurchase Payments payable under the Sale and Repurchase Agreement. The Certificates shall be payable as provided in the Sale and Repurchase Agreement and the Trust Agreement. Current Interest payable with respect to the Certificates shall accrue at the Variable Rate determined from time to time pursuant to the Sale and Repurchase Agreement and the Trust Agreement, but in no event shall the Variable Rate exceed 30% per annum. Accreted Value and Current Interest payable with respect to the Certificates shall be payable as soon as reasonably practicable after Program Receipts are received by the City and transferred to the Trustee for deposit in the Revenue Fund, as described in the Trust Agreement. The sum of all Current Interest accruing during any calendar year shall be added to the Accreted Value of the Certificates as of the day before the first Business Day of each January, after which date such Accreted Value will bear interest at the Variable Rate.

6. Representations, Warranties and Agreements. Each of the City and the Corporation (but only to the extent of its own representations set forth below) hereby and respectively represent, warrant and agree respectively as of the Initial Closing, and by delivery of an Issuance Request and by the Trustee's execution and delivery, on behalf of the Corporation, of the Certificates so requested, will have been deemed to have represented, warranted and agreed respectively as of each Subsequent Closing as follows:

(a) The City and the Corporation have full legal right, power and authority to (i) enter into the Legal Documents to which each is a party, (ii) cause the sale, execution, and delivery of each Series of the Certificates to the Purchaser as provided herein and (iii) carry out and consummate the transactions contemplated by the Program Documents;

(b) By all necessary official action of the City and the Corporation, as the case may be, prior to or concurrently with the acceptance hereof, the City and the Corporation have duly authorized and approved the execution and delivery of, and the performance by the City and the Corporation of, the obligations on the part of each contained in, the Legal Documents, and the consummation by them of all other transactions contemplated by the Program Documents;

(c) The City and the Corporation, as the case may be, have complied and are in compliance in all material respects with the obligations on their part contained in the Program Documents;

(d) Neither the City nor the Corporation is in any material respect in breach of or default under any applicable constitutional provision, law, ordinance or administrative regulation to which it is subject or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement (including the Cooperative

Agreement) or other instrument to which the City or the Corporation is a party or to which the City or the Corporation or any of its property or assets is otherwise subject, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instrument; and the execution and delivery of the Certificates and the Legal Documents, and compliance with the provisions on the City's part or the Corporation's part, as the case may be, contained therein, will not conflict with or constitute a breach of or a default under any constitutional provision, law, ordinance, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement (including the Cooperative Agreement), or other instrument to which the City or the Corporation, as this case may be, is a party or to which the City or the Corporation, as the case may be, or any of their property or assets is otherwise subject, nor will any such execution, delivery, adoption, or compliance result in the creation or imposition of any lien, charge, or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the City or the Corporation, as the case may be, or under the terms of any such constitutional provision, law, ordinance, administrative regulation or instrument, except as provided in the Sale and Repurchase Agreement, the Trust Agreement or the Ordinance;

(e) All authorizations, approvals, licenses, permits, consents, and orders of any governmental authority, legislative body, board, agency, or commission having jurisdiction of the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the City or the Corporation, as the case may be, of their respective obligations in connection with the execution and delivery of the Certificates under the Trust Agreement have been duly obtained, except for such approvals, consents, and orders as may be required under the Blue Sky or securities laws of any state in connection with the offering and sale of the Certificates; and all authorizations, approvals, licenses, permits, consents, and orders of any governmental authority, board, agency, or commission having jurisdiction of the matter which are required for the due authorization by, or which would constitute a condition precedent to or the absence of which would materially adversely affect the due performance by, the City or the Corporation of their respective obligations under the Program Documents have been duly obtained;

(f) The lien on and pledge of Program Receipts under the Sale and Repurchase Agreement and Trust Agreement, as permitted by the Ordinance, are valid and enforceable and are prior to any other lien or claim on Program Receipts, and all other provisions of the Ordinance, insofar as they affect the rights of the Certificate Holders and the Original Purchaser and the transactions contemplated by the Sale and Repurchase Agreement and the Trust Agreement, are valid and enforceable;

(g) Between the date of this Purchase Contract and the date on which no Certificates are outstanding and no additional Series of Certificates may be executed and delivered hereunder and under the Trust Agreement, neither the City nor the Corporation will, without the prior written consent of the Purchaser, offer or issue any bonds, notes, or

other obligations for borrowed money, or incur any material liabilities, direct or contingent, payable from Program Receipts;

(h) There is no action, suit, proceeding, inquiry, or investigation, at law or in equity, before or by any court, government agency, public board or body, pending or, to the best knowledge of the City and the Corporation, as the case may be, after reasonable investigation, threatened against the City or the Corporation, as the case may be, or any of their officers in their respective capacities as such, affecting the existence of the City or the Corporation, as the case may be, or the titles of their officers to their respective offices, or affecting or seeking to prohibit, restrain, or enjoin the sale, execution, or delivery of the Certificates or the collection of the Program Receipts to be used to pay the Repurchase Payments, or the pledge of and lien on the funds and accounts established pursuant to the Trust Agreement, or contesting or affecting the validity or enforceability of the Certificates or the Program Documents, or contesting the powers of the City or the Corporation, as the case may be, or any authority of either entity for the execution and delivery of the Certificates, or in any way contesting or challenging the consummation of the transactions contemplated hereby, or which might materially adversely affect the ability of the City or the Corporation, as the case may be, to collect Program Receipts; nor is the City or the Corporation, as the case may be, aware of any circumstance not disclosed in writing to the Corporation or the City, as the case may be, and to the Purchaser prior to the date of such representation that would form a basis for any such action, suit, proceeding, inquiry, or investigation, wherein an unfavorable decision, ruling, or finding would materially adversely affect the authorization, execution, delivery, or performance by the City or the Corporation, as the case may be, of the Legal Documents, the performance by the City or the Corporation of their respective obligations under the Program Documents, or the execution by the Trustee of the Certificates;

(i) At any time prior to the date on which no Certificates are outstanding and no additional Series of Certificates may be executed and delivered hereunder and under the Trust Agreement, the City and the Corporation, as the case may be, will furnish such information, execute such instruments, and take such other action in cooperation with the Purchaser as the Purchaser may request in order (i) to qualify the Certificates for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Purchaser may designate, and (ii) to determine the eligibility of the Certificates for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the Certificates; provided, however, that neither the City nor the Corporation shall be required to qualify to do business or consent to service of process in connection with any such qualification or determination in any jurisdiction;

(j) No filing or other action, other than the execution of the Legal Documents, is required to create for the benefit of the Trustee and the Certificate Holders a first and perfected lien on and security interest in the Program Receipts and, upon execution of the Legal Documents, such a first lien shall exist.

(k) The City and the Corporation will apply the proceeds from the sale of the Certificates solely for the purposes specified in the Sale and Repurchase Agreement and the Trust Agreement.

(l) The City and the Corporation are aware that the Original Purchaser hereunder is the Placement Agent, and the City and the Corporation hereby consent and waive any objection thereto.

(m) The City and the Corporation will assist the Original Purchaser and the Placement Agent in preparing materials for use in any private placement of the Certificates which the Original Purchaser or the Placement Agent may determine to offer, which assistance shall include but not be limited to the preparation of a private placement memorandum. At the time of any such private placement, the City and the Corporation will represent and warrant that the information provided by each of them, respectively, is true and correct, and the City and the Corporation shall provide the same indemnification and opinions as are provided hereunder and shall be subject to the same obligations, as applicable, as hereunder. The provisions of this Section 6(m) shall survive the termination of this Purchase Contract and discharge of the City's obligations under the Trust Agreement.

7. Indemnification.

(a) General Indemnity. The City shall, to the extent permitted by law, defend, indemnify and hold harmless the Corporation, the Trustee (as the assignee of the Corporation's rights under the Sale and Repurchase Agreement), the Placement Agent, the Calculation and Verification Agent, the Original Purchaser, each Certificate Holder and their members, directors, officers, employees, and agents from and against any and all losses, claims, damages, liabilities, or expenses of every kind, character, and nature whatsoever (excepting therefrom only such losses, claims, damages, liabilities, or expenses arising from the negligence of the Corporation, with respect to indemnification of the Corporation, or the Trustee, with respect to indemnification of the Trustee), including, but not limited to, losses, claims, damages, liabilities, or expenses arising out of, resulting from, or in any way connected with (1) the City's interest in, or use of, the Program Receipts or any portion thereof; (2) the sale of the Certificates and the carrying out of any of the transactions contemplated by the Certificates, this Purchase Contract, the Trust Agreement, the Sale and Repurchase Agreement or any related document; (3) the carrying out of the Program; or (4) the acceptance of and administration by the Trustee of the Trustee's duties under the Trust Agreement. The City shall, to the extent permitted by law and, with respect to the indemnification of the Placement Agent, the Calculation and Verification Agent, the Original Purchaser and each Certificate Holder (each a "Special Indemnified Party"), to the extent permitted by clause (b) below, pay or reimburse the Corporation, the Trustee, the Special Indemnified Parties and their members, directors, officers, employees and agents for any and all costs, reasonable attorneys fees, liabilities or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, expenses or actions. Notwithstanding anything to the contrary in the Sale and Repurchase Agreement or the Trust Agreement, the Trustee and the Corporation shall not

be entitled to payment, reimbursement or indemnification for actions involving willful misconduct, default or negligence on the part of the Trustee or the Corporation, respectively.

(b) Limited Source Indemnity. The obligation of the City to defend, indemnify, and hold harmless the Special Indemnified Parties for any suits or claims arising from the sale of the Certificates or the City's pursuit of the Program (as described in the preceding paragraph), shall be payable solely from (i) Program Receipts, and (ii) any proceeds of insurance or self-insurance programs in which the City has participated or will participate. With regard to item (i), if currently available Program Receipts are insufficient to pay attorney fees and expenses and other litigation related costs at the time they are incurred, the Special Indemnified Parties may fund the excess of such fees and expenses, and any future Program Receipts will be used to reimburse the Special Indemnified Parties for such amounts. With regard to item (ii), the City agrees to cooperate fully with the Special Indemnified Parties in submitting and pursuing claims against such City insurers, although the City will have no obligation to maintain any insurance coverage.

(c) Special Conditions. The City's indemnity obligation to the Special Indemnified Parties under section (b) above is subject to the following conditions:

(1) The City will pay attorneys' fees and costs of a single law firm chosen by the Special Indemnified Parties to collectively represent the Special Indemnified Parties, and such counsel shall, to the extent consistent with the Special Indemnified Parties' interests, cooperate with the City and avoid duplication and wastefulness in the assertion of defenses;

(2) The City will pay attorneys' fees and costs of additional law firms to represent an individual Special Indemnified Party where (i) the counsel retained under (c)(1) above could not, as a result of applicable law or code of professional responsibility, assert a defense on behalf of such an individual Special Indemnified Party while simultaneously representing the other Special Indemnified Parties for reasons including, but not limited to, a situation in which the use of counsel chosen by the Special Indemnified Parties to represent the Special Indemnified Party or Parties would present such counsel with a conflict of interest, or in which the actual or potential defendants in, or targets of, any such action include the Special Indemnified Party or Parties, and the City and the Special Indemnified Party or Parties shall have reasonably concluded that there may be legal defenses available to it and/or other Special Indemnified Parties that are different from or additional to those available to the City, or (ii) the City shall authorize the Special Indemnified Parties to employ separate counsel at the expense of the City; and

(3) The City will not, without the prior written consent of the Special Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in which indemnification or contribution may be sought hereunder (whether or not

the Special Indemnified Parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each Special Indemnified Party from all liability arising out of such claim, action, suit or proceeding.

The provisions of this Section 7 shall survive the termination of this Purchase Contract and the discharge of the City's obligations under the Sale and Repurchase Agreement and the Trust Agreement.

8. Closing Conditions. The Purchaser has entered into this Purchase Contract in reliance upon the representations and warranties of the City and the Corporation contained herein, upon the representations and warranties to be contained in the documents and instruments to be delivered at each Closing, and upon the performance by the City and the Corporation of their respective obligations hereunder, both as of the date hereof and as of each Delivery Date. Accordingly, the Purchaser's obligations under this Purchase Contract to purchase, to accept delivery of, and to pay for each Series of the Certificates shall be conditioned, at the option of the Purchaser, upon the performance by the City and the Corporation, as the case may be, of their respective obligations to be performed hereunder and under such documents and instruments at or prior to the applicable Closing, and shall also be subject to the following additional conditions:

(a) The representations and warranties of the City and the Corporation, as the case may be, contained herein shall be true, complete, and correct on the date hereof and on and as of the applicable Delivery Date, as if made on such Delivery Date, and the statements of the officers and other officials of the City, the Corporation, and the Trustee made in any certificate or other document furnished pursuant to the provisions hereof shall be accurate;

(b) At the time of the applicable Closing, the Sale and Repurchase Agreement and the Trust Agreement shall have been duly authorized, executed, and delivered by the respective parties thereto, all in substantially the forms heretofore submitted to the Purchaser, with only such changes as shall have been agreed to in writing by the Purchaser, and shall be in full force and effect; the Cooperative Agreement and the Ordinance shall be in full force and effect and shall not have been invalidated, repealed or amended in any manner that adversely affects the interests of the Purchaser or the Certificate Holders, and there shall be in full force and effect such resolution or resolutions of the City Council of the City and the Board of Directors of the Corporation as, in the opinion of counsel to the Purchaser ("Purchaser's Counsel"), shall be necessary or appropriate in connection with the transactions contemplated hereby;

(c) Between the date hereof and the applicable Delivery Date, the marketability of the Certificates shall not have been materially adversely affected, in the judgment of the Purchaser (evidenced by a written notice to the City, the Corporation and the Trustee terminating the obligation of the Purchaser to accept delivery of and make any payment for any additional Series of the Certificates), by reason of any of the following:

(1) the declaration of war or engagement in major military hostilities by the United States or the occurrence of any other national emergency or calamity relating to the effective operation of the government of, or the financial community in, the United States;

(2) the declaration of a general banking moratorium by federal, New York, or California authorities, or the general suspension of trading on any national securities exchange;

(3) the imposition by the New York Stock Exchange or other national securities exchange, or any governmental authority, of any material restrictions not now in force with respect to the Certificates or obligations of the general character of the Certificates or securities generally, or the material increase of any such restrictions now in force, including those relating to the extension of credit by, or the charge to the net capital requirements of, the Purchaser; or

(4) an order, decree, or injunction of any court of competent jurisdiction, or order, ruling, regulation, or official statement by the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, issued or made to the effect that the issuance, offering, or sale of obligations of the general character of the Certificates, or the execution, offering, or sale of the Certificates, including any or all underlying obligations, as contemplated hereby, is or would be in violation of the federal securities laws as amended and then in effect or in violation of any other federal or state statutory or case law, regulation, order, ruling, judgment, decree or injunction.

(d) With respect to the Initial Closing, the Purchaser shall have received the following documents at or prior to the Closing Date, in each case satisfactory in form and substance to the Purchaser:

(1) Copies of the Trust Agreement, the Sale and Repurchase Agreement and the Placement Agent Agreement, each duly executed and delivered by the respective parties thereto;

(2) An opinion, dated the Closing Date and addressed to the City, the Purchaser and the Placement Agent, of Counsel to the Corporation, in substantially the form attached hereto as Exhibit A;

(3) An opinion, dated the Closing Date and addressed to the Purchaser, the Placement Agent and the Corporation, of the City Attorney of the City, in substantially the form attached hereto as Exhibit B;

(4) An opinion of Purchaser's Counsel, dated the Closing Date and addressed to the Purchaser, addressing such matters as the Purchaser shall determine;



(5) A signature and incumbency certificate of the Corporation and a certificate, dated the Closing Date, signed by an authorized officer of the Corporation, in substantially the form attached hereto as Exhibit C;

(6) A signature and incumbency certificate of the City and a certificate, dated the Closing Date, signed by an authorized officer of the City, in substantially the form attached hereto as Exhibit D;

(7) A certified copy of an extract from the Bylaws of the Trustee authorizing the execution and delivery of the Trust Agreement and the Certificates, together with a certificate to the effect that:

(i) the Trustee is a national banking association duly organized and existing under the laws of the United States of America;

(ii) the Trustee has full corporate trust powers and authority to serve as Trustee under the Trust Agreement; and

(iii) to the best knowledge of the Trustee, the Trustee's action in executing and delivering the Trust Agreement is in full compliance with, and does not conflict with, any applicable law or governmental regulation currently in effect, and does not conflict with or violate any contract to which the Trustee is a party or any administrative or judicial decision by which the Trustee is bound;

(8) An opinion of counsel to the Trustee, dated the date of Closing and addressed to the City, the Corporation and the Purchaser, to the effect that:

(i) the Trustee has been duly incorporated and is in good standing as a national banking association under the laws of the United States, having full power and authority to enter into and to perform its duties as Trustee under the Trust Agreement;

(ii) the Trustee has duly authorized, executed and delivered the Trust Agreement;

(iii) assuming due authorization, execution and delivery by the other parties thereto, the Trust Agreement constitutes the legal, valid and binding agreement of the Trustee, enforceable in accordance with its terms, except that the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws in effect from time to time affecting the rights of creditors generally and except to the extent that the enforceability thereof may be limited by the application of general principles of equity;

(iv) the Certificates have been duly executed and delivered by the Trustee;



(v) no authorization, approval, consent, or other order of any other governmental authority or agency having jurisdiction over the Trustee is required for the valid authorization, execution, delivery and performance by the Trustee of the Trust Agreement; and

(vi) the execution and delivery of the Trust Agreement and compliance by the Trustee with the provisions thereof, under the circumstances contemplated thereby, do not and will not in any material respect conflict with or constitute on the part of the Trustee a breach or default under any agreement or other instruments to which the Trustee is a part or by which it is bound or any existing law, regulation, court order or consent decree to which the Trustee is subject.

(9) A certified copy of the resolution of the Corporation authorizing the execution and delivery of the Legal Documents;

(10) A certified copy of the resolution of the City authorizing the execution and delivery of the Legal Documents;

(11) A certified copy of the Ordinance;

(12) A certified copy of the Cooperative Agreement, together with a letter from DTSC stating that the proposed financing does not violate the Cooperative Agreement;

(13) The Professional Services Agreement, including evidence that the City's Outside Counsel has subordinated its right to payment of legal fees and disbursements consistent with the terms of the Sale and Repurchase Agreement;

(14) An opinion, dated the Closing Date and addressed to the City, the Corporation and the Purchaser, of the City's Outside Counsel in substantially the form attached hereto as Exhibit E;

(15) A certification by the City (a) describing all amounts it has expended in connection with the Program to the date of Closing, describing all outstanding amounts owed to Outside Counsel or other predecessor firm, whether or not on a contingency basis, and certifying that all fees and disbursements incurred by Outside Counsel in connection with the Program prior to the Closing Date have either been paid in full or have been subordinated to the rights of the Purchaser hereunder; (b) stating the outstanding balance in the Municipal Fund, (c) stating the amount of Program Receipts received since July 30, 1999 through the date of Closing and (d) stating the amounts of DTSC Settlement Payments paid through the date of Closing;

(16) A certified copy of the Program Budget;

(17) A certificate of the Calculation and Verification Agent, stating that it is capable of performing the functions assigned to it under the Sale and

Repurchase Agreement and the Trust Agreement and stating that it accepts its duties thereunder; and

(18) A final and non-appealable court judgment in a validation action commenced under California Code of Civil Procedure Section 860, in form and substance satisfactory to the Purchaser (the "Validation Judgment");

(19) Such additional legal opinions, certificates, proceedings, instruments, and other documents as the Purchaser or Purchaser's Counsel may reasonably request to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the City's or Corporation's representations and warranties contained herein and the due performance or satisfaction by the City, the Corporation, and the Trustee on or prior to the Closing Date of all material agreements then to be performed and conditions then to be satisfied by any of them in connection with the transactions contemplated hereby and by the Program Documents.

If the City, the Corporation or the Trustee shall be unable to satisfy the conditions set forth in this Purchase Contract to the obligation of the Purchaser to purchase, accept delivery of, and pay for the initial Series of the Certificates, or if the obligation of the Purchaser to purchase, accept delivery of, and pay for the initial Series of Certificates shall be terminated for any reason permitted by this Purchase Contract, then this Purchase Contract and all obligations of the Purchaser hereunder may be terminated by the Purchaser at, or at any time prior to, the Closing Date by written notice to the Trustee, the Corporation and the City, and neither the Purchaser nor the City shall have any further obligations hereunder.

(e) With respect to each Subsequent Closing, which shall occur no more often than quarterly, on the first Business Day of any January, April, July or October, beginning October 2000, on or before the Commitment Period Ending Date, the Purchaser shall have received the following documents at or prior to the applicable Delivery Date, in each case satisfactory in form and substance to the Purchaser:

(1) An Issuance Request of the City, as provided in the Trust Agreement, dated the applicable Delivery Date, signed by an authorized officer of the City, and delivered to the Purchaser and the Trustee at least 15 Business Days prior to such Subsequent Closing Date, in substantially the form attached hereto as Exhibit F, requesting the Trustee to execute and deliver and requesting the Purchaser to purchase an amount of Certificates with a minimum principal component of \$250,000 and specifying the Delivery Date;

(2) Certificates of authorized officers of the City and the Corporation, respectively, dated the applicable Delivery Date, stating that, after investigation and review of the Program Documents, no event of default, nor any event which, after the passage of time or the giving of notice would constitute an event of default under a Program Document, has occurred and is continuing;

(3) An opinion, dated the Delivery Date and addressed to the Purchaser and the City, of Counsel to the Corporation, in substantially the form attached hereto as Exhibit A;

(4) An opinion, dated the Delivery Date and addressed to the Purchaser and the Corporation, of the City Attorney of the City, in substantially the form attached hereto as Exhibit B;

(5) An opinion of Purchaser's counsel, dated the Delivery Date and addressed to the Purchaser, addressing such matters as the Purchaser shall determine;

(6) An opinion of counsel to the Trustee, dated the Delivery Date and addressed to the City, the Purchaser and the Corporation, to the effect that the Certificates have been duly executed and delivered by the Trustee;

(7) An opinion, dated the Delivery Date and addressed to the City, the Corporation and the Purchaser, of the City's Outside Counsel in substantially the form attached hereto as Exhibit E;

(8) A certified copy of a revised Program Budget; and

(9) Such additional legal opinions, certificates, proceedings, instruments, and other documents as the Purchaser or Purchaser's Counsel may reasonably request to evidence the truth and accuracy, as of the date of the applicable Delivery Date, of the City's or Corporation's representations and warranties contained herein and the due performance or satisfaction by the City, the Corporation, and the Trustee on or prior to the applicable Delivery Date of all material agreements then to be performed and conditions then to be satisfied by any of them in connection with the transactions contemplated hereby and by the Program Documents.

If the City, the Corporation or the Trustee shall be unable to satisfy the conditions set forth in this Purchase Contract to the obligation of the Purchaser to purchase, accept delivery of, and pay for any subsequent Series of the Certificates, or if the obligation of the Purchaser to purchase, accept delivery of, and pay for any subsequent Series of Certificates shall be terminated for any reason permitted by this Purchase Contract, then this Purchase Contract and all obligations of the Purchaser hereunder may be terminated by the Purchaser at, or at any time prior to, the Delivery Date applicable to such subsequent Series of Certificates by written notice to the Trustee, to the Corporation and to the City, and neither the Purchaser nor the City shall have any further obligations hereunder.

9. City Reporting Obligations.

(a) So long as the Purchase Commitment is in effect, the City shall inform the Purchaser, in writing, to the extent permitted by law and in a manner that would preserve any applicable privilege, regarding significant events and developments not previously reported to the Purchaser, including but not limited to: (1) the "Core Action" undertaken

by the City in pursuit of the Program, other actions in which the City seeks Program Receipts, actions or proceedings challenging or threatening the City's engagement of its Outside Counsel; and all other significant actions or proceedings which involve the Program; (2) actions or proceedings involving the Program Documents or the performance of the City's obligations thereunder; (3) actions or proceedings involving the Ordinance, whether or not related to the Program; and (4) changes in laws, precedents, case law and other developments in any statute, common law or principle pursuant to which the City seeks Program Receipts.

(b) Prior to each Subsequent Closing, or three months after the previous closing, whichever occurs sooner, the City shall provide to the Purchaser a brief written summary of developments in actions and proceedings within the scope of subsection (a) above. Notwithstanding the above, notice of settlements, recoveries, court decisions (whether favorable or adverse), and the filing of substantive motions shall be given within two business days following such event.

10. Liquidated Damages. In the event that the Purchaser fails (other than for a reason permitted by this Purchase Contract) to accept and pay for any Series of Certificates on the applicable Delivery Date, the amount of ten percent (10%) of the aggregate principal amount of the Certificates authorized to be executed and delivered under the Trust Agreement but which have not yet been issued shall constitute liquidated damages for such failure and for any and all defaults hereunder on the part of the Purchaser, and the Purchaser's payment of such amount to the City shall constitute a full release and discharge of all claims and rights of the City against the Purchaser.

11. Expenses.

(a) The Purchaser shall be under no obligation to pay, and the City shall pay, any expenses incident to the performance of the City's obligations hereunder including, but not limited to: (i) the cost of preparation and printing of each Series of Certificates; (ii) the fees and expenses of counsel to the City and the Corporation; (iii) all legal fees, court costs, and all other expenses in connection with any validation action conducted under California Code of Civil Procedure Sections 860 through 870 with respect to the Certificates or any actions contemplated by the Program Documents; (iv) all fees and expenses of the Trustee and the Calculation and Verification Agent and (v) the fees and disbursements of any engineers, accountants, and other experts, consultants, or advisors retained by the City.

(b) The Purchaser shall pay (i) fees, if any, payable to the California Debt and Investment Advisory Commission in connection with the execution and delivery of each Series of Certificates; and (ii) all other expenses incurred by the Purchaser in connection with the sale, execution, and delivery of each Series of Certificates, including the fees and disbursements of Purchaser's Counsel.

12. Notices. Any notice or other communication to be given to the City under this Purchase Contract may be given by delivering the same in writing at the City's address set forth above, Attention: City Attorney, and to the Purchaser under this Purchase Contract may be given by

delivering the same in writing to Lehman Brothers Inc., 3 World Financial Center, Seventh Floor, New York, New York 10285, Attention: James Hraska.

13. Parties in Interest. This Purchase Contract is made solely for the benefit of the City, the Corporation, the Purchaser (including the successors or assigns of the Purchaser), and the Placement Agent (with respect to opinions which are to be addressed to the Placement Agent), and no other person shall acquire or have any right hereunder or by virtue hereof. All of the City's and the Corporation's representations, warranties, and agreements contained in this Purchase Contract shall remain operative and in full force and effect regardless of (i) any investigations made by or on behalf of the Purchaser; (ii) delivery of and payment for any Series of Certificates pursuant to this Purchase Contract; and (iii) any termination of this Purchase Contract.

14. Effectiveness and Counterpart Signatures. This Purchase Contract shall become effective upon the execution of the acceptance by authorized officers of the City and the Corporation and shall be valid and enforceable at the time of such acceptance. This Purchase Contract may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

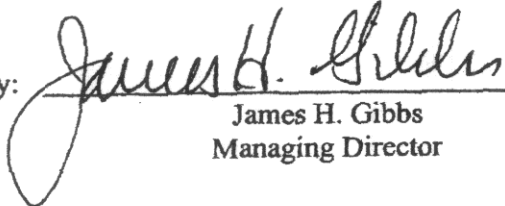
15. Headings. The headings of the sections of this Purchase Contract are inserted for convenience only and shall not be deemed to be a part hereof.

16. Severability of Invalid Provisions. If any one or more of the provisions contained in this Purchase Contract shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Purchase Contract and such invalidity, illegality, or unenforceability shall not affect any other provision of this Purchase Contract, and this Purchase Contract shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. The City, the Corporation and the Purchaser each hereby declares that they would have entered into this Purchase Contract and each and every other section, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, paragraphs, sentences, clauses, or phrases of this Purchase Contract may be held illegal, invalid, or unenforceable.

17. Governing Law. This Purchase Contract shall be construed in accordance with the laws of the State of California.

Very truly yours,

LEHMAN BROTHERS INC.

By:   
James H. Gibbs  
Managing Director

Accepted:

CITY OF LODI

By:   
City Manager

Approved as to Form

  
City Attorney

LODI FINANCING CORPORATION

By:   
Treasurer

Approved as to Form

  
Corporation Counsel

**EXHIBIT A**

**FORM OF OPINION OF COUNSEL TO THE CORPORATION**

[Date]

Lehman Brothers Inc.  
555 California Street, 30th Floor  
San Francisco, California 94104

City of Lodi  
221 West Pine Street  
Lodi, California 95240

U.S. Bank Trust National Association  
Corporate Trust Services  
One California Street, Suite 2250  
San Francisco, California 94111

**LODI FINANCING CORPORATION  
(ENVIRONMENTAL ABATEMENT PROGRAM)  
VARIABLE RATE CERTIFICATES OF PARTICIPATION**

Ladies and Gentlemen:

I have acted as counsel to the Lodi Financing Corporation, a California non-profit public benefit corporation (the "Corporation"), in connection with the execution, delivery and sale of \$\_\_\_\_\_ aggregate principal amount of Lodi Financing Corporation (Environmental Abatement Program) Variable Rate Certificates of Participation, Series \_\_ (the "Certificates") pursuant to the terms of a Certificate Purchase Contract dated as of June 28, 2000 (the "Purchase Contract") among the Corporation, the City of Lodi (the "City") and Lehman Brothers Inc. The Certificates represent undivided proportionate interests in payments made pursuant to a Program Receipts Sale and Repurchase Agreement, dated as of June 1, 2000 (the "Sale and Repurchase Agreement"), between the City and the Corporation and are executed and delivered pursuant to a Trust Agreement, dated as of June 1, 2000 (the "Trust Agreement"), between the Corporation and U.S. Bank Trust National Association, as trustee thereunder (the "Trustee"). Unless otherwise defined herein, the terms defined in the Sale and Repurchase Agreement have the same meanings when used in this opinion.

In connection with the foregoing, I have examined originals, or copies certified or otherwise identified to my satisfaction, of such documents, corporate records, and other instruments as I have deemed necessary or appropriate for the purposes of this opinion, including (a) the Purchase Contract, (b) the Sale and Repurchase Agreement, (c) the Placement Agent Agreement, dated as of June 28, 2000, by and among the City, the Corporation and Lehman Brothers Inc.,



(d) the Trust Agreement (collectively, the "Legal Documents"), (e) the Articles of Incorporation and Bylaws of the Corporation, and (f) Resolution No. LFC-4 (the "Corporation Resolution"), adopted on November 3, 1999 authorizing the execution and delivery of the Certificates and the Legal Documents. The Legal Documents, together with the Corporation Resolution, City Resolution No. 99-180, adopted on November 3, 1999, City Ordinance No. 1684, adopted November 17, 1999 and effective December 17, 1999, and the Comprehensive Joint Cooperative Agreement, dated as of May 1997, by and between the City and the California Environmental Protection Agency, Department of Toxic Substances Control, are collectively referred to herein as the "Program Documents."

Based upon such examination, I am of the opinion that:

1. The Corporation is duly organized and validly existing under the laws of the State of California.

2. The Corporation has full corporate power and authority to execute and deliver the Legal Documents and to carry out and consummate the transactions contemplated by the Program Documents.

3. The Corporation Resolution authorizing the execution and delivery of the Certificates and the execution of the Legal Documents was duly adopted at a meeting of the Board of Directors of the Corporation which was called and held pursuant to law, is in full force and effect and has not been amended, modified or rescinded.

4. The Legal Documents have each been duly authorized and delivered by the Corporation, and each constitutes a legally valid and binding obligation of the Corporation enforceable against the Corporation in accordance with its respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other laws or equitable principles relating to or affecting the enforcement of creditors' rights generally and to the application of equitable principles if equitable remedies are sought.

5. No approval, consent, or authorization of any governmental or public agency, authority, or person is required for the execution and delivery by the Corporation of the Legal Documents, or the performance by the Corporation of its obligations under the Program Documents, or the execution and delivery of the Certificates.

6. The execution and delivery of the Legal Documents by the Corporation and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence, or operation of the Corporation, any commitment, agreement, or other instrument to which the Corporation is a party or by which it or its property is bound or affected, or any ruling, regulation, ordinance, judgment, order, or decree to which the Corporation (or any of its officers in their respective capacities as such) is subject, or any provision of the laws of the State of California relating to the Corporation and its affairs.

7. There is no action, suit, proceeding, inquiry, or investigation at law or in equity, or before any court, public board, or body, pending or, to the best of my knowledge, threatened against or affecting the Corporation or any entity affiliated with the Corporation or any of its officers or directors in their respective capacities as such (nor to the best of my knowledge is

there any basis therefor), which questions the powers of the Corporation referred to in paragraphs 2 and 3 above or in connection with the transactions contemplated by, or the validity of the proceedings taken by the Corporation in connection with the authorization, execution, or delivery of, the Legal Documents; nor am I aware of any circumstance not disclosed in writing to the City and Lehman Brothers Inc. prior to the date of this opinion that would form a basis for any such action, suit, proceeding, inquiry or investigation wherein an unfavorable decision, ruling, or finding would materially adversely affect the transactions contemplated by the Program Documents, or which, in any way, would materially adversely affect the validity or enforceability of the Program Documents or, in any material respect, the ability of the Corporation to perform its obligations under the Program Documents.

Respectfully submitted,

**EXHIBIT B**

**FORM OF OPINION OF CITY ATTORNEY**

[Date]

Lehman Brothers Inc.  
555 California Street, 30th Floor  
San Francisco, California 94104

Lodi Financing Corporation  
221 West Pine Street  
Lodi, California 95240

**LODI FINANCING CORPORATION  
(ENVIRONMENTAL ABATEMENT PROGRAM)  
VARIABLE RATE CERTIFICATES OF PARTICIPATION**

Ladies and Gentlemen:

I have served as counsel to the City of Lodi (the "City") in connection with the execution, delivery and sale of \$\_\_\_\_\_ aggregate principal amount of Lodi Financing Corporation (Environmental Abatement Program) Variable Rate Certificates of Participation, Series \_\_ (the "Certificates").

In connection with the foregoing, I have examined originals, or copies certified or otherwise identified to my satisfaction, of such documents, corporate records, and other instruments as I have deemed necessary or appropriate for the purposes of this opinion, including (a) the Program Receipts Sale and Repurchase Agreement, dated as of June 1, 2000 (the "Sale and Repurchase Agreement"), by and between the Lodi Financing Corporation (the "Corporation") and the City, (b) the Placement Agent Agreement, dated as of June 28, 2000 by and among the City, the Corporation and Lehman Brothers Inc., (c) the Trust Agreement, dated as of June 1, 2000 (the "Trust Agreement"), by and between the Corporation and U.S. Bank Trust National Association, as trustee thereunder (the "Trustee"), and (d) the Certificate Purchase Contract, dated as of June 28, 2000 (the "Purchase Contract"), by and among the City, the Corporation and Lehman Brothers Inc.

The Sale and Repurchase Agreement, the Placement Agent Agreement, and the Purchase Contract, and the Professional Services Agreement and Scope of Services Statement, dated December 1, 1999, between Envision Law Group and the City are collectively referred to herein as the "City Legal Documents." The City Legal Documents, together with the Comprehensive Joint Cooperative Agreement, dated as of May 1997 (the "Cooperative Agreement"), by and between the City and the California Environmental Protection Agency, Department of Toxic Substance Control, the Trust Agreement, the City's Ordinance No. 1684, adopted November 17, 1999 and effective December 17, 1999 (the "Ordinance"), the City's Resolution No. 99-180,

adopted on November 3, 1999, and the Corporation's Resolution No. LFC-4, adopted on November 3, 1999, authorizing the execution and delivery of the Certificates and the related documents, are collectively referred to herein as the "Program Documents." Terms used herein that are defined in the Sale and Repurchase Agreement shall have the meanings specified therein.

Based upon such examination, I am of the opinion that:

1. The City is a general law city, duly created, organized, and existing under the laws of the State of California and duly qualified to implement and carry out the Program.

2. The City has the authority and right to execute, deliver, and perform the City Legal Documents and the City has complied with the provisions of applicable law in all matters relating to the transactions contemplated by the Program Documents.

3. The City Resolution authorizing the execution of the Legal Documents was duly adopted at a meeting of the City Council of the City which was called and held pursuant to law, is in full force and effect and has not been amended, modified or rescinded.

4. The Ordinance was duly adopted at a meeting of the City Council of the City which was called and held pursuant to law, became effective on December 17, 1999, is in full force and effect and has not been amended, modified or rescinded.

5. The City Legal Documents have been duly authorized, executed, and delivered by the City, are in full force and effect, and, assuming that the other parties thereto have all the requisite power and authority and have taken all the requisite action to execute and deliver the City Legal Documents to which they are a party, constitute the legal, valid, and binding agreements of the City enforceable against it in accordance with their respective terms, subject in each case to laws relating to bankruptcy, insolvency, or other laws affecting the enforcement of creditors' rights generally and to the application of equitable principles if equitable remedies are sought.

6. No approval, consent, or authorization of any governmental or public agency, authority, or person is required for the execution and delivery by the City of the City Legal Documents, or the performance by the City of its obligations under the Program Documents, or the execution and delivery of the Certificates.

7. The execution and delivery of the City Legal Documents by the City and compliance with the provisions thereof will not conflict with or constitute a breach of, or default under, any instrument relating to the organization, existence, or operation of the City, any commitment, agreement, or other instrument to which the City is a party or by which it or its property is bound or affected (including, but not limited to, the Cooperative Agreement), or any ruling, regulation, ordinance, judgment, order, or decree to which the City (or any of its officers in their respective capacities as such) is subject, or any provision of the laws of the State of California relating to the City and its affairs.

8. The lien on and the pledge of Program Receipts under the Sale and Repurchase Agreement and Trust Agreement, as permitted by the Ordinance, are valid and enforceable and are prior to any other lien or claim on Program Receipts, and all other provisions of the

Ordinance, insofar as they affect the rights of the Certificate Holders and the Original Purchaser and the transactions contemplated by the Sale and Repurchase Agreement and the Trust Agreement, are valid and enforceable;

9. There is no action, suit, proceeding, inquiry, or investigation at law or in equity, or before any court, public board, or body, pending or, to the best of my knowledge, threatened against or affecting the City or any entity affiliated with the City or any of its officers in their respective capacities as such (nor to the best of my knowledge is there any basis therefor), which questions the powers of the City referred to in paragraphs 2 and 3 above, or which concerns the transactions contemplated by, or the validity of the proceedings taken by, the City in connection with the authorization, execution, or delivery of, the City Legal Documents or, except as described in Appendix A hereto, the validity or enforceability of the Ordinance; nor am I aware of any circumstance not disclosed in writing to the Corporation and Lehman Brothers Inc. prior to the date of this opinion that would form a basis for any such action, suit, proceeding, inquiry or investigation wherein an unfavorable decision, ruling, or finding would materially adversely affect the transactions contemplated by the Program Documents, or which, in any way, would materially adversely affect the validity or enforceability of the Program Documents or, in any material respect, the ability of the City to perform its obligations under the Program Documents.

Respectfully submitted,

## EXHIBIT C

### FORM OF CERTIFICATE OF THE CORPORATION

#### LODI FINANCING CORPORATION (ENVIRONMENTAL ABATEMENT PROGRAM) VARIABLE RATE CERTIFICATES OF PARTICIPATION

#### CLOSING CERTIFICATE OF THE CORPORATION

I, \_\_\_\_\_, the \_\_\_\_\_ of the Lodi Financing Corporation (the "Corporation"), hereby certify as follows:

1. This certificate is provided pursuant to Section 8(d)(5) of that certain Certificate Purchase Contract, dated as of June 28, 2000 (the "Purchase Contract"), by and among the City of Lodi (the "City"), the Corporation and Lehman Brothers Inc. All capitalized terms used herein that are not otherwise defined shall have the same meanings as in such Purchase Contract.

2. The Corporation has full legal right, power, and authority (i) to enter into the Sale and Repurchase Agreement, the Trust Agreement, the Purchase Contract and the Placement Agent Agreement, dated June 28, 2000, by and among the City, the Corporation and Lehman Brothers Inc. (collectively, the "Legal Documents") and (ii) to carry out and consummate the transactions contemplated by the Program Documents.

3. By all necessary corporate action of the Corporation prior to or concurrently herewith, the Corporation has duly authorized and approved the execution and delivery of, and the performance by the Corporation of the obligations on its part contained in, the Legal Documents, and the consummation by it of all other transactions contemplated by the Program Documents.

4. The Corporation has complied with all the agreements and satisfied all of the conditions on its part to be performed or satisfied at or prior to the date hereof pursuant to the Legal Documents.

5. The Corporation is not in any material respect in breach of or default under any applicable law or administrative regulation to which it is subject or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement (including, without limitation, the Trust Agreement), or other instrument to which the Corporation is a party or to which the Corporation or any of its property or assets is otherwise subject, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instrument; and the execution and delivery of the Legal Documents, and compliance with the provisions on the Corporation's part contained therein, will not conflict with or constitute a breach of or a default under any constitutional provision, law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement, or other instrument to which the Corporation is a party or to which the Corporation or any of its property or assets is otherwise subject, nor will

(2) The City will pay attorneys' fees and costs of additional law firms to represent an individual Special Indemnified Party where (i) the counsel retained under (c)(1) above could not, as a result of applicable law or code of professional responsibility, assert a defense on behalf of such an individual Special Indemnified Party while simultaneously representing the other Special Indemnified Parties for reasons including, but not limited to, a situation in which the use of counsel chosen by the Special Indemnified Parties to represent the Special Indemnified Party or Parties would present such counsel with a conflict of interest, or in which the actual or potential defendants in, or targets of, any such action include the Special Indemnified Party or Parties, and the City and the Special Indemnified Party or Parties shall have reasonably concluded that there may be legal defenses available to it and/or other Special Indemnified Parties that are different from or additional to those available to the City, or (ii) the City shall authorize the Special Indemnified Parties to employ separate counsel at the expense of the City; and

(3) The City will not, without the prior written consent of the Special Indemnified Parties, settle or compromise or consent to the entry of any judgment with respect to any pending or threatened claim, action, suit or proceeding in which indemnification or contribution may be sought hereunder (whether or not the Special Indemnified Parties are actual or potential parties to such claim or action) unless such settlement, compromise or consent includes an unconditional release of each Special Indemnified Party from all liability arising out of such claim, action, suit or proceeding.

The provisions of this Section 5 shall survive the termination of this Agreement, the Purchase Contract and the discharge of the City's obligations under the Sale and Repurchase Agreement and the Trust Agreement.

6. Cooperation with Private Placement. The City and the Corporation agree to assist the Investor and Lehman in preparing materials for use in any private placement of the Certificates which the Investor or Lehman may determine to offer, which assistance shall include but not be limited to the preparation of a private placement memorandum. At the time of any such private placement, the City and the Corporation will represent and warrant that the information provided by each of them, respectively, is true and correct, and the City and the Corporation shall provide the same indemnification and opinions as are provided under the Purchase Contract and shall be subject to the same obligations, as applicable, as thereunder. The provisions of this Section 6 shall survive the termination of this Agreement and the discharge of the City's obligations under the Sale and Repurchase Agreement and the Trust Agreement.

7. Agreement Supersedes Letter of July 30, 1999. This agreement shall supersede and replace the letter agreement dated July 30, 1999, as amended on November 4, 1999, which upon execution hereof shall be of no further force and effect.

8. Governing Law. The terms of this agreement will be governed by and construed in accordance with the laws of the State of California.

9. Termination; Survival. This Agreement shall terminate one year from the date of acceptance hereof unless extended by the mutual written consent of the City and Lehman. In addition, this agreement may be terminated any time at the option of Lehman if, in the opinion of Lehman, circumstances exist which adversely affect the marketability of the Certificates. The provisions of Sections 4 and 5 hereof shall survive any termination of this agreement. The City shall be obligated to pay Lehman the Placement Fee described above, from Program Receipts, for any placement of Certificates with parties introduced to the City by Lehman if such placement, either in preliminary or final form, occurs within one year after termination of this Agreement.

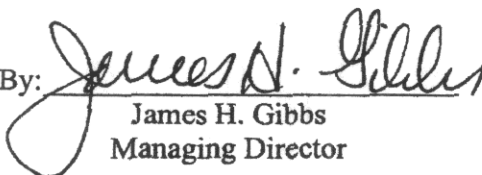


The City of Lodi  
June 28, 2000  
Page 7

Should the City agree with the above terms, Lehman requests that the City execute a copy of this letter and return the same to us at the address indicated below.

Sincerely,

Lehman Brothers Inc.  
555 California Street  
30th Floor  
San Francisco, California 94104

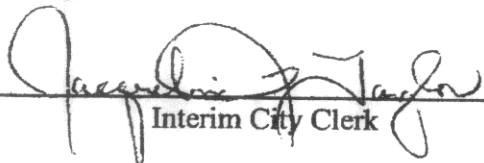
By:   
James H. Gibbs  
Managing Director

Agreed to this 28th day of June, 2000:

CITY OF LODI

By:   
City Manager

ATTEST:

  
Interim City Clerk


APPROVED AS TO FORM:

  
City Attorney

LODI FINANCING CORPORATION

By:   
Treasurer

ATTEST:

  
Acting Secretary

APPROVED AS TO FORM:

  
Corporation Counsel

**5 PM**  
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## Lodi News-Sentinel **lodinews.com**

Wednesday, April 02, 2003

### NEWS

## Dry cleaner won't be forced to investigate, clean up contamination on its own, judge says

By *Layla Bohm/News-Sentinel Staff Writer*

A federal judge has ruled that a Lodi dry cleaning business will no longer be forced to investigate and clean up groundwater contamination on its own -- a move the cleaner's attorneys considered a victory over the city.

In the ruling that was signed Friday and distributed this week to attorneys, Judge Frank C. Damrell cited what he called the city of Lodi's "belated admission" that the city is potentially responsible for the contamination.

That admission came at a February court hearing in Sacramento, one of many court appearances held since the city sued local businesses in 2000.

Until that hearing, the city had claimed no responsibility in the contamination argument, instead saying that insurance companies of more than a dozen local businesses, including the News-Sentinel, should pay for the cleanup.

Friday's ruling came three months after Damrell granted a request by the city and issued a preliminary injunction against Guild Cleaners. That injunction ordered the business to investigate the contamination and create a plan to clean it up.

But Lodi has since admitted that it might be partially liable, because it owns the sewers that are believed to transport two toxic chemicals known as TCE and PCE.

Under law, Damrell ruled, a potentially responsible party cannot seek an injunction against another party, since both might be responsible.

Guild attorneys saw the ruling as a victory, and also pointed out Damrell's comments about the city's legal actions.

Referring to it as "unusually protracted and costly litigation," Damrell went on to say that the city's strategies have "led to unproductive detours from the ultimate goal of dealing with the city's contaminated groundwater crisis."

#### Headlines:

**Dry cleaner won't be forced to investigate, clean up contamination on its own, judge says**

**Proposal for school district budget cuts includes cutting 55 teacher positions**

**Ridding Galt building of mold will cost at least \$875,000, council says**

**Regional Roundup**

**Acampo man proudly flies big flags**

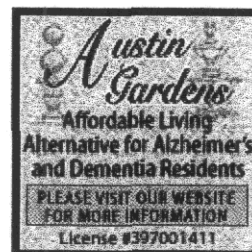
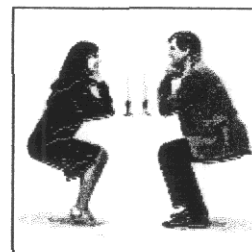
**Galt delays vote to require fire sprinklers in new homes**

**April showers won't prevent another dry year, state official says**

#### Photos

**Riding for the nation**

**Peltier Road crash**



Attorneys for both Guild and the city agreed that cleanup is the most important thing, but when that will happen is still undetermined.

While Guild plans to continue investigating the depth of contamination in preparation for a September trial, attorneys Lori Gualco and Stephen Meyer pointed out that Lodi will not legally be able to regain attorney fees if it is partially responsible for the contamination.

The city has spent approximately \$20 million on the contamination case – with more than \$14 million coming from a Wall Street firm – an amount that Gualco and Meyer said would be less than the actual cost of cleanup, once interest was figured in.

While the cleanup cost has been estimated by some to cost \$100 million, some original estimates were much lower. Kennedy/Jenks Consultants, an engineering firm, estimated the cleanup to cost between \$20 million and \$40 million, said Joseph Salazar, an attorney for insurance company M&P Investments.

"It's not a \$100 million cleanup. Nobody thinks that," Meyer said.

Guild will continue its investigation, Gualco said, and Salazar said that initial reports show the contamination is not as bad as some people had once thought.

While Guild attorneys declared Damrell's ruling a victory, the city did not see it quite so negatively.

"They're a little ahead of the game," City Attorney Randy Hays said. "The question is not whether we're a (potentially responsible party) but whether we're a liable party."

The city still maintains that it had nothing to do with the contamination, and Hays said the city will likely appeal Damrell's latest ruling, just as both sides have appealed nearly every ruling since the lawsuit began.

Attorneys and clients spent Tuesday in mediation in San Francisco, and while they were ordered by a judge not to discuss the outcome of that session, a trial is still set for September.

"I think we all walked away feeling that progress was being made," said Lodi Mayor Susan Hitchcock.

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## Lodi News-Sentinel lodinews.com

Wednesday, April 02, 2003

### NEWS

## Mayor, city manager to attend hearing for pollution case

By Layla Bohm/News-Sentinel Staff Writer

Lodi's mayor and the city manager have been asked — actually nearly ordered — to attend a mediation hearing today regarding the city's ongoing pollution lawsuit against local businesses.

While only attorneys have generally attended such meetings in the past, mediator Judge Edward A. Infante called city officials last week and was "rather firm" about his request, City Manager Dixon Flynn said.

When Infante called Mayor Susan Hitchcock, he told her that representatives from the city had not attended past mediation hearings, and attorneys hadn't even attended every time, Hitchcock said Monday.

"As far as I know, he just wants to know that the council is aware of what's going on in mediation. He said a lot of money is being spent and no cleanup is being done, and that concerns him," Hitchcock said.

The cleanup refers to potentially cancer-causing chemicals commonly referred to as TCE and PCE.

In 2000, the city filed a federal lawsuit, claiming that the businesses, including the News-Sentinel, and their insurance companies are responsible for cleaning up groundwater contaminated with potentially cancer-causing chemicals.

Numerous court hearings later, federal Judge Frank C. Damrell ordered a mediation hearing, and it has been set for today in San Francisco.

Councilman Keith Land wondered why the mayor and city manager were asked to attend the mediation, and if that meant officials from other businesses would attend the mediation hearing.

"My question is, 'Will the chief executive officers of the insurance companies be in attendance so they know what's going on?'" Land said.

### Headlines:

**Mayor, city manager to attend hearing for pollution case**

**U.S. Supreme Court denies city's petition on pollution lawsuit**

**Lodi's Addington quadruplets celebrate 10th birthday**

**Regional Roundup**

**Lodi city manager suggests drastic budget cuts**

**Home fire sprinklers on Galt City Council agenda**

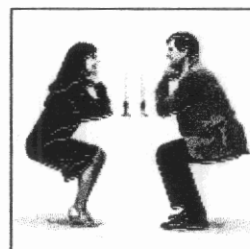
**Local schools awarded Science Olympiad medals**

**Tracy Marine killed in Iraqi war is San Joaquin County's first casualty**

### Photos

**Riding for the nation**

**Peltier Road crash**



This question was echoed by City Attorney Randy Hays, but when he asked Infante about it on Monday, the judge called Hays an "obstructionist" and did not answer the question, Hays said.

What the mediation will accomplish remains to be seen.

City Councilman Larry Hansen, who plans to attend the hearing today, was under the impression that the suit will likely be resolved this year. In that case, today's mediation could lay the groundwork for a settlement.

As a four-month member of the city council, though, Hansen still has not been formally caught up to speed on the current status of the lawsuit.

"I really don't know where we (are at) this point," he said, explaining that while he has followed the contamination story, he has not been informed on the city's legal strategies.

John Beckman, also a new council member, said he too has not been informed in detail about the lawsuit. A closed-session meeting for Hansen and Beckman has been scheduled for April 21, Hays said.

Several similar mediation sessions have been held over the past few years, but the case continues to go forward.

Various parties have conducted tests, but no clean-up has actually been done while attorneys argue over who is responsible for removing the chemicals.

"The key question is, are the insurance companies liable or not? ... I think the insurance companies are liable, and that's why we should move on with this," Land said. "If they're not liable, let's move forward."

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Originally Published Thursday, June 26, 2003

# Lodi mayor in councilman's sights

## Land blasts Hitchcock over lawsuit

By Jeff Hood

Lodi Bureau Chief



**LAND:**  
Councilman.



**HITCHCOCK:**  
Mayor.

LODI -- City Councilman Keith Land is seeking to censure or boot Susan Hitchcock from her position as mayor, saying she has operated behind the city attorney's back threatening a multimillion-dollar pollution lawsuit in which the city is mired.

The move is a departure from December, when Land nominated Hitchcock for the mayor's spot, an attempt to thaw their frosty relationship. Council members in Lodi are elected, and the mayor is selected by other council members, typically on a rotating basis.

Land said Hitchcock is interfering with the city's 2<sup>1</sup>/<sub>2</sub>-year-old federal lawsuit against businesses and property owners the city holds liable for contaminating soil and groundwater in central Lodi. The plumes of PCE and TCE, potentially carcinogenic solvents, threaten to contaminate the city's water supply.

"I nominated her, and I feel responsible for that," Land said, "and I'll do whatever I can to right a wrong."

Hitchcock talked with a court-appointed federal mediator after a May 19 session in Lodi, angering Land, the only other council member to attend. When City Council members were unable to decide last week in a closed session what their role should be in the mediation talks, they voted 3-2 not to participate until they could reach a final decision.



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Hitchcock, however, said she would continue to attend the sessions despite the vote, because she had been invited by mediator Edward A. Infante, a retired federal magistrate.

"If Mayor Hitchcock is going to go about in her own way, why should the other four of us show up?" Land said. "I respect her opinion. It's her conduct that I do not appreciate. She was actually talking to the judge behind the city attorney's back.

"We now have the insurance companies -- their attorneys -- sitting at the table trying to mitigate the issue of contamination. Susan is unfolding, by herself and without council consent, the whole process we've been working on for eight years."

Hitchcock, the leading vote-getter in the 2002 election, said she merely told Infante after the hearing that the City Council hadn't been shown a proposed settlement offer from a downtown property owner.

Hitchcock said she wouldn't wait for the City Council's permission to attend the next mediation session, which U.S. District Judge Frank Damrell on Wednesday ordered held Friday despite a request by Lodi to delay it to allow the city's environmental-law specialist, Michael Donovan, to recover from arm surgery.

Stephen Meyer, an attorney representing suspected polluter Guild Cleaners, said Hitchcock is the only City Council member trying to understand the litigation, on which Lodi already has spent more than \$20 million.

"The City Council, rather than criticizing Mayor Hitchcock, should instead be asking some of the same tough questions that she has raised," Meyer said. "The problem the city has created for itself will not go away by sticking your head in the sand."

City Attorney Randall A. Hays declined to say if Hitchcock's actions have hurt the city's legal efforts, but he did say the mayor received a copy of the settlement offer April 21. He said he didn't ask the council to consider the offer, because it wasn't acceptable based on parameters -- including

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recovery of legal fees -- the City Council established in 1997, one year before Hitchcock's election.

"Why would we not want council members going and hearing the information?" Hitchcock said. "All this goes back to the judge asking me to attend the sessions because the council is not being presented with information."

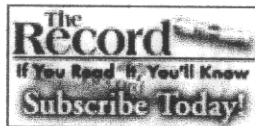
Councilman John Beckman said he would vote at least to censure Hitchcock if she attends a mediation session against the council's wishes. And if there's a motion to remove her as mayor, he would support that as well, he said.

"The ball's in Susan's court," he said.

Hays said state law doesn't specifically say a mayor chosen by a vote of a council can be demoted by a vote of the council. But he cited a 1984 opinion by California Attorney General John Van De Kamp that city councils such as Lodi's can remove a mayor at any time by a majority vote.

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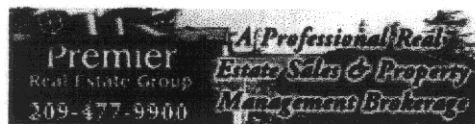
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*Mary Bookman*

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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

---oOo---

CITY OF LODI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. CIV S-00-2441
	)	
M&P INVESTMENTS, et al.,	)	
	)	
Defendants.	)	
_____	)	

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
Before the Honorable Frank C. Damrell, Jr., Judge thereof

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July 11, 2003

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SACRAMENTO, CALIFORNIA

JULY 11, 2003

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THE CLERK: Calling Civil Case 00-2441, City of Lodi v. M&P investment, et al. It's on motion for summary judgment and motion for stay and a motion to dismiss, Your Honor.

THE COURT: Appearances of counsel, please.

MS. GUALCO: Lori Gualco on behalf of Jack Alquist.

MR. MEYER: Stephen Meyer on behalf of jack Alquist.

MR. ROBINSON: Donald Robinson State of California.

MR. BOWERS: Aaron Bowers on behalf of Defendant Oddfellows Hall Association of Lodi, Inc.

MR. SALAZAR: Joe Salazar on behalf of M&P Investments and David Mustin.

MR. HIXSON: Thomas Hixson, Your Honor for Fireman's Fund Insurance Company. We have been incorporated for purposes of the State, Your Honor.

MS. HOBLER: Jean Hobler for the Guild Defendants, Your Honor.

MR. THOMAS: Mike Thomas from the Downey Brand Firm, also for the Guild Defendants.

1 MR. DONOVAN: Good Morning, Your Honor, Mike  
2 Donovan, senior assistant district attorney on behalf of  
3 the People of State of California and City of Lodi. With  
4 the Court's permission, because of accoutrement, leave to  
5 appear without my jacket.

6 MR. HAYS: Randy Hays, city attorney, City of  
7 Lodi, on behalf of the City of Lodi.

8 THE COURT: Good morning, Counsel.

9 MS. GUALCO: Your Honor, we actually have good  
10 news for you, we have a stipulation on one of the motions  
11 before you. The Guild Cleaners, Inc. motion regarding  
12 the RAO issued by the DTSC. DTSC and Guild Cleaners,  
13 Inc. have reached a stipulation regarding that motion,  
14 and with your permission we would like to take that  
15 matter first.

16 THE COURT: Is this only as to Guild?

17 MS. GUALCO: Only as to Guild Cleaners, Inc.,  
18 Your Honor. That is the only moving party regarding the  
19 RAO.

20 THE COURT: Let's hear the stipulation.

21 MS. GUALCO: And Mr. Robinson is here. What we  
22 have decided, Your Honor, is that the -- the RAO issued  
23 by the Department of Toxics against Guild Cleaners, Inc.  
24 will be stayed for a period of 90 days. And during that  
25 90 days, Guild Cleaners, Inc. has agreed to continue with

1 the work that it has been undertaking in the City of Lodi  
2 for the past two years. Guild Cleaners, Inc. would like  
3 to have its motion continued on calendar for 90 days to  
4 coincide with the termination of that 90-day agreement  
5 regarding the stay, although the parties have agreed that  
6 we can revisit this, and if necessary we can continue the  
7 stay against Guild Cleaners, Inc. Both sides would be  
8 reserving all of their rights regarding both the issuance  
9 of the RAO by the Department of Toxics and the issues  
10 that Guild has raised in its motion to the Court to stay  
11 that order or to have it withdrawn by the Department. Is  
12 that correct, Mr. Robinson?

13 MR. ROBINSON: This is -- yes. Your Honor,  
14 this is a voluntarily stay as to Guild Defendants, not  
15 the other parties in the order.

16 THE COURT: All right, that stipulation with  
17 respect to that particular Defendant and on those terms  
18 it has been recited by Ms. Gualco. I don't know, there  
19 is such a cornucopia of issues and questions, I don't  
20 know where to begin here. First on the calendar are the  
21 motions for summary judgment, and there are, I think,  
22 issues that are raised by those motions that probably  
23 would be subsumed under the other issues raised by the  
24 stay motions. In particular, the affect of the RAO on  
25 this litigation, City's motion to stay litigation, but,

1 you know, with respect to the motions for summary  
2 judgment, the three that have been filed -- I guess,  
3 Mr. Donovan, are you going to be arguing, as wounded as  
4 you may appear?

5 MR. DONOVAN: Yes, Your Honor, together with  
6 Ms. Fusich.

7 THE COURT: If you wanted to, just in case you  
8 are going to argue this motion today, you needn't come  
9 forward if you don't feel up to it. We're back to an old  
10 saw here on these motions. We have -- I guess you are  
11 seeking a declaration -- summary adjudication declared  
12 the Defendants named in these motions, they have in fact  
13 committed a nuisance, but we are not in violation of  
14 California Civil Code, but there is nothing that is going  
15 to happen, they are just -- they have -- that is wrong,  
16 and that is the declaration you are looking for. Then we  
17 move on from there, depending on what happens in the  
18 appellate process; is that what you are saying?

19 MR. DONOVAN: Absolutely, Your Honor. That --  
20 you have a very fair understanding of what the moving  
21 parties are -- elements of liabilities alone, Your Honor.

22 THE COURT: Right, right. This brings into  
23 question -- where did Mr. Robinson go?

24 MR. ROBINSON: Here, Your Honor.

25 THE COURT: You'll have to come back up here.



1 You are going to be here a while. The RAO, which the  
2 state describes a full remedial action of the site, seems  
3 to me to prevent -- if that goes forward against the  
4 parties that it is -- that are targeted, what is the  
5 affect on this litigation, the first phase at a minimum,  
6 and why do I have to go through the gyrations of  
7 California nuisance law when the whole purpose here is  
8 full remediation of the site and the state has assumed  
9 the role of lead agency? That's what appears to me that  
10 is what has happened. Am I missing something here?  
11 Where is the city in all this? The state has moved ahead  
12 and decided they are going to take care of the site.

13 MR. DONOVAN: Is that addressed to the city,  
14 Your Honor?

15 THE COURT: It strikes me -- it appears there  
16 is certainly overlap and duplication if we are going to  
17 proceed on nuisance law and seeking injunctions when the  
18 state administratively has moved forward to conduct a  
19 full remedial action of the site itself.

20 MR. ROBINSON: I can address at least one  
21 point, Your Honor. In preparing to argue the motion  
22 which is being put over by the stipulation I thought  
23 about that issue, and it occurs to me that the parties do  
24 have competing contribution claims as against each other  
25 with respect to their --

1 THE COURT: I understand that.

2 MR. ROBINSON: And I assume that would probably  
3 still go forward, I believe, in phase I or at least the  
4 liability, that underlying the portion, would go forward.

5 THE COURT: I understand apportionment.

6 MR. ROBINSON: The order doesn't impact that  
7 particular issue.

8 THE COURT: Right. Let's assume the point is  
9 that the city now is proceeding against these same  
10 Defendants on nuisance claims to accomplish the same  
11 ends; isn't that the case? Am I missing something there?

12 MR. ROBINSON: No, Your Honor. Your Honor,  
13 what I was prepared to say, once again in my presentation  
14 this morning, if the City was to proceed with its  
15 injunction claims at some later time, perhaps during  
16 phase I, and it occurred or it appeared that there was  
17 some overlap between what the city was requesting and  
18 what DTSC has ordered in its administrative order, then  
19 the Court has the power certainly to reject or modify or  
20 somehow impose an order that doesn't overlap or duplicate  
21 or it's inconsistent with what DTSC has asked for. I  
22 personally don't know what the city might request that  
23 goes beyond DTSC's administrative order, but that is  
24 certainly within your power to fashion. So there  
25 isn't --

1 THE COURT: I can probably -- I don't know if  
2 the city is going to respond to this, but I want to get  
3 my thoughts out on this. This has been a very expensive  
4 piece of litigation. I've heard argument of counsel and  
5 millions and millions of dollars and it -- if there is  
6 going to be a full remediation of the site under the  
7 lead of the DTSC, then what role -- why does the city  
8 want to spend more money to get injunctive relief when  
9 the state has gone ahead and basically assumed that role  
10 in place of the city? What is it you want to do with  
11 your injunctive relief that the state is not going to  
12 take care of with its administrative order? I'm not  
13 talking about contribution or things of that --

14 MR. DONOVAN: I think that is a good place to  
15 begin. First of all, the city does not have any  
16 contribution cases and contribution claims before this  
17 Court in --

18 THE COURT: Yeah.

19 MR. DONOVAN: -- in this matter. There are  
20 contribution claims against the state, none by the city.  
21 Number two, the city continues to operate under the  
22 comprehensive cooperative agreement with the state, with  
23 DTSC, and cooperated and in fact following the procedural  
24 involvement of this case and the fact that we simply were  
25 unable to bring ourselves to a position of injunctive

1 relief given the legal issues. This Court itself invited  
2 DTSC, the state, to take a presence in the field. DTSC,  
3 under the comprehensive cooperative agreement, Your  
4 Honor, has always had the lead on the activities at the  
5 site. The city had lead agency status with regard to  
6 enforcement activities at the site. What -- right now  
7 what we have is an administrative order issued by DTSC.  
8 It's subsumed some, not all, the relief the city would --

9 THE COURT: Why don't you talk to DTSC about  
10 that? It seems to me they have the resources, the  
11 expertise, they are taking the role of -- obviously they  
12 are doing what they are doing because the city has not  
13 been able to assume its lead agency role sufficiently or  
14 adequately, and that's why they are doing what they are  
15 doing. That's why they said in their declaration why  
16 wouldn't this be an opportunity for the city instead of  
17 spending more money, here you have the state doing  
18 exactly what should be done, and I don't know what it's  
19 going to cost the city, it seems to be less expensive to  
20 spend money than the city continuing its enforcement. It  
21 strikes me as being redundant and highly expensive and  
22 unnecessary.

23 There is some things the state is not going to  
24 do. Maybe you should outline that and maybe the state  
25 will do it, I don't know what you have in mind. It seems

1 to me we are getting somewhere with the state taking  
2 action in this matter in terms of remediation of the  
3 site, not in terms of litigation of the issues.

4 MR. BOWERS: Aaron Bowers on behalf of  
5 Oddfellows. As you mentioned, a cornucopia of issues  
6 here. We have moved into the issues that are intimately  
7 intertwined with Oddfellows' motion to dismiss or stay.  
8 As you talked about what could the city seek or request,  
9 I just wanted to direct your attention for a moment back  
10 to Oddfellows' motion where we are seeking to dismiss or  
11 alternately stay only the phase I issues, which are the  
12 injunctive relief issues being proved by the city. In  
13 that regard, Your Honor, our position is, as you have  
14 articulated, there is nothing more the city can do from a  
15 non-personalized injunctive relief standpoint than what  
16 DTSC has done through issues of ISC RAO.

17 THE COURT: I was referring to phase I, by the  
18 way. I understand those issues. But the parties that  
19 are not encompassed by phase I, here we are with the  
20 state having taken the position of assuming what appears  
21 to me to be the role that the city was attempting to  
22 assert under the cooperative agreement, and I'll -- I  
23 have questions about the cooperative agreement, I just  
24 want to talk about what is left of this litigation in  
25 phase I, that's what I want to encompass in these

1 questions, and what is left.

2 Motions for summary judgment, I don't know, it  
3 strikes me that where is the threatened power for  
4 injunctive relief that the state has gone ahead in  
5 remediating the site? Where is the threat of harm if the  
6 state is taking care of the problem?

7 MR. DONOVAN: It assumes a mountain of  
8 information, Your Honor, that the state, A, is taking  
9 care of the problem, and, B, the other two orders that  
10 have been issued here do not include all the defendants  
11 in this case.

12 THE COURT: I understand that.

13 MR. DONOVAN: The city is going to want  
14 additional relief even based upon the existing scope of  
15 that order. And, finally, You Honor, it's necessary for  
16 this Court to recognize this -- the implication of this  
17 Court's jurisdiction by the city and, two, by the People  
18 of State of California was done in account of the full  
19 communication and cooperation --

20 THE COURT: We'll get to the cooperation  
21 agreement. I have a lot of questions about the coop- --

22 MR. DONOVAN: Here we are -- my point is only  
23 to say, Your Honor, years later here we are with the  
24 state having acceded and supported the invocation of the  
25 Court's jurisdiction by us and the cooperative agreement

1 arrangement and their administration assertion of the  
2 authority. You say it's going to accomplish clean up,  
3 that's a fact yet to be established. We do not know  
4 that. B, it's an administrative act, it does not have  
5 the compulsive authority and finality of this Court's  
6 order.

7 THE COURT: Slow down.

8 MR. DONOVAN: Finally, Your Honor, it is  
9 imperative, I think, for this Court to recognize that the  
10 overall nuisance abatement activities over the site-wide  
11 activities of the Plaintiff working in full communication  
12 and cooperation with DTSC. We have absolutely no desire,  
13 as has already been indicated, no desire, to bring to you  
14 issues that are already being resolved under a separate  
15 process, but there are going to be almost certainly, Your  
16 Honor, numerous issues involving the abatement and  
17 clean-up activities in this site. There are going to be  
18 compliance issues, there are going to be issues with  
19 regard to parties that aren't even parties to the DTSC  
20 order. There are just numerous parties of the --

21 THE COURT: Let me ask you this: it appears  
22 that much of those issues could be part of this, you  
23 know, very tortured litigation involving the parties.  
24 Obviously lots of things have happened in this  
25 litigation, but here we have a truly innocent party that

1 says they want to completely remediate the site and the  
2 state issues these orders to do so, now maybe it wouldn't  
3 be complete, but it would seem to me that I would -- it  
4 would be a waste of judicial resources to continue on  
5 with -- because you want to vindicate my jurisdiction,  
6 which is essentially coming from you, Mr. Donovan.

7 MR. DONOVAN: But vindicating federal  
8 jurisdiction, Your Honor --

9 THE COURT: We have been vindicating federal  
10 jurisdiction for three years and we haven't done much  
11 with this site. And it seems to me we stop to take an  
12 assessment where are we going with this litigation and  
13 where does it stop now in face of state taking this  
14 action.

15 It may not be perfect, there may be problems,  
16 but I would much rather see the state attempt to do its  
17 job, which I think it has done before on other sites, and  
18 I don't think this is necessarily that unusual. If it  
19 fails to do its job, we'll take that up, but it seems to  
20 me that for the city to expend more funds, to file more  
21 motions for injunctions and deal with these issues, that  
22 may be fine for scholars to discuss, but is not going to  
23 advance the clean up of the site. That is a waste of my  
24 resources and a waste of the city's resources and a waste  
25 of the Defendant's resources. Apparently the state is



1 going forward with this thing. I don't know whether cost  
2 is going to be allocated. Why would the city object to  
3 that?

4 MR. DONOVAN: When does the city ever object,  
5 Your Honor?

6 THE COURT: Why would you want to take the time  
7 of this Court and go through these motions for, you know,  
8 injunctive relief and seeking declarations for nuisance  
9 and -- I mean, the state is going forward to clean up the  
10 site, isn't that what we are here for? Why isn't that  
11 the foremost in your mind? It's going to save the city a  
12 lot of money, save you have a lot of the time, save me a  
13 lot of time, and save the Defendants time and money. I  
14 just -- what I'd like to see is what do we have left in  
15 this litigation. That's what we do. Litigation has been  
16 resolved considerably in light of this. You say maybe  
17 things are not going to be accomplished by the state,  
18 that may be true and I'm more than willing to hear that  
19 rather than proceed with all these motions in this  
20 litigation. I think we need to take a pause and take a  
21 deep breath and see what is left in this litigation in  
22 light of what the state is doing, that would be the most  
23 efficient use of your time and my time.

24 MS. GUALCO: May I respond to that particular  
25 question?

1 THE COURT: You may.

2 MS. GUALCO: Your Honor, we have been going  
3 forward in the mediation process. As you know you issued  
4 the June 25th order ordering all parties, insurers,  
5 counsel, et cetera, to participate in mediation. We had  
6 the Department of Toxics and the regional board at our  
7 last mediation, which occurred approximately one week  
8 ago. Unfortunately, Envision did not make an appearance,  
9 but Mr. Hays was there, along with the city manager, and  
10 we are now in discussions with the Department of Toxics  
11 and the regional board. In fact, we have sent them a  
12 proposal for a settlement. We don't have agreed-upon  
13 terms or negotiations, but we have a structure that we  
14 are going to go forward on, and I think this is what you  
15 are talking about: can we move forward on the mediation  
16 process, get the claims settled without the litigation  
17 cost and all the money.

18 THE COURT: I'm always for mediation and  
19 settlement, but I'm not trying -- I assume it has some  
20 impact on that process, but I would like to know from the  
21 parties what is really left of this litigation, first  
22 phase at least, and -- I mean, I know there is the issue  
23 of the trial ahead of us and I'll get to the issue of  
24 stay in that litigation itself as a result of the  
25 interlocutory appeals, but I'm just trying to get my arms

1 around the remnants of the phase I in light of what the  
2 state has ordered.

3 MS. GUALCO: I think what is left, Your Honor,  
4 is the city's 107(b) defenses. The city doesn't have  
5 them, they are PRP. We simply move on to the  
6 contribution phase of this case, phase III.

7 MR. BOWERS: That flows over. There is still  
8 phase I issues left. Namely, there is a hoast of  
9 defendants in phase I that are not covered by the ISC  
10 RAO. Again, in our papers we are pretty clear to try and  
11 point that out.

12 THE COURT: What happens to those defendants  
13 then?

14 MR. BOWERS: Those defendants will proceed to  
15 phase I trial on the issues scheduled for phase I trial.

16 THE COURT: And the city -- let's -- wait a  
17 minute, that's assuming the city is going to be the  
18 prosecute -- plaintiff. I mean, there is a lot of issues  
19 still left unresolved in that respect.

20 Let me ask the state. Mr. Robinson, with the  
21 numerous other defendants that are out there in this  
22 case, obviously you have got targeted in your seven of  
23 the defendants, whatever you call them in your RAO, what  
24 about other potential responsible parties with that --  
25 the site; how would you deal with that?

1 MR. ROBINSON: My understanding is we have  
2 named the responsible parties as to the central area  
3 plume, and there are, I believe, four other areas. The  
4 agencies are working with some of those responsible  
5 parties, more cooperative basis, and we'll see how that  
6 kind of pans out. If necessary, certainly the agencies  
7 reserve the right to issue further orders with respect to  
8 other -- the other four areas.

9 THE COURT: Is it your understanding that the  
10 DTSC is now proceeding -- the phrase I keep referring to,  
11 and I assume you are not talking about just in the  
12 central area, you are talking about the entire site, you  
13 are embarking on an effort of full remediation of the  
14 site, the site being the entire plume?

15 MR. ROBINSON: The order only covers the  
16 central area.

17 THE COURT: Is the state contemplating dealing  
18 with the other four areas?

19 MR. ROBINSON: My understanding is the regional  
20 board is working on two of those areas with the  
21 responsible parties.

22 MR. SALAZAR: Joseph Salazar, Jr., I can jump  
23 in on that part. I represent M&P Investment, we're the  
24 property owner at the Busy Bee site. We are working  
25 without an order with the regional board. We are under

1 contract with the regional board to pay oversight costs,  
2 I got a bill last night. We are one of the sites moving  
3 forward. We have an RIFS. We submitted to the regional  
4 board a proposed pilot study for extraction ground water  
5 drilling to check lower end of contamination. We are  
6 working toward remediation in the short term. We believe  
7 we will have a remedy in place by the end of this year,  
8 so it need not take litigation to get a site cleaned up,  
9 nor does it take an actual order. We are moving forward  
10 with the board. If we stumble or falter, certainly the  
11 board can come in and issue orders.

12 THE COURT: So there are four other sites that  
13 you understand, Mr. Robinson?

14 MR. DONOVAN: And there may be more, Your  
15 Honor,

16 MR. ROBINSON: There is four other areas.

17 MR. DONOVAN: Area --

18 MR. ROBINSON: Within the larger extent of  
19 contamination. My understanding is the regional board  
20 state agency is working with -- working on two of those  
21 areas and DTSC has reserved the other two. It's --

22 THE COURT: Let's assume for the moment -- let  
23 me ask you this: Let's assume the trial is held, the  
24 city is held to be a responsible party, right? Now, with  
25 that interlocutory appeal, maybe I don't know how it

1 would affect that finding. I can't imagine that 731  
2 would allow the city to circumvent that finding. Let's  
3 assume the city is a responsible party, okay? So it  
4 can't then take these actions or seek an injunctive  
5 relief, would the state, the board, and the Department of  
6 Toxics proceed ahead and -- is that your understanding,  
7 they would then take over as a lead agency in remediation  
8 of that entire area?

9 MR. ROBINSON: That certainly is my  
10 understanding. Were either the regional both or DTSC  
11 taking the action, they have entered into a memorandum of  
12 understanding between them as to which agency leads  
13 responsibility for which sites.

14 THE COURT: That is already worked out between  
15 the two agencies?

16 MR. ROBINSON: That has been, Your Honor.

17 THE COURT: Mr. Donovan, if we have a trial in  
18 this matter and the city is found to be a responsible  
19 party, isn't that where we are headed, as Mr. Robinson  
20 indicated, the state agency would take charge of the  
21 remediation of the site, the lead agency?

22 MR. DONOVAN: That assumes several points, Your  
23 Honor, that are now pending, of course, in the  
24 interlocutory appeals before the 9th Circuit. The first  
25 and foremost is the city attorney's authority to

1 represent the People of the State of California and their  
2 claims, which are the injunctive claims at this point.  
3 Your Honor has since, of course, ruled that the real  
4 party in interest on those claims was the city.

5 THE COURT: Let me ask you about that; if the  
6 Court held a trial and found the city to be a responsible  
7 party, is it your position then that if the 9th Circuit  
8 reversed my ruling that then the People of the State of  
9 California would pursue injunctive relief against all  
10 responsible parties, including the city, would that be  
11 the case you --

12 MR. DONOVAN: The People of the State --

13 THE COURT: Let me finish. The People of the  
14 State of California, that entity, they turn around,  
15 because the City of Lodi is a responsible party, would  
16 then sue and seek injunctive relief against the City of  
17 Lodi; is that what you are saying?

18 MR. DONOVAN: Not at all, Your Honor.

19 THE COURT: Why wouldn't that be the case?

20 MR. DONOVAN: Because the people have chosen  
21 to --

22 THE COURT: You couldn't circumvent the  
23 responsible parties?

24 MR. DONOVAN: This is not a circuit case, Your  
25 Honor. May I finish, and I think the Court will see my

1 point, I hope that it will? Your Honor, the people are  
2 the plaintiff in this case on the injunctive claims. We  
3 have always acknowledged to Your Honor and repeatedly  
4 acknowledged to Your Honor any party in this case has any  
5 right to assert contribution claims against the city to  
6 the extent they choose to do so, assert them and prove  
7 them. Your Honor is trying to suggest that now -- that  
8 the Court should instruct the prosecutorial authority as  
9 to which defendants it should choose.

10 THE COURT: I'm not saying that. I'm saying it  
11 seems so disingenuous to say that 731 now the city  
12 becomes the People of the State of California. The city  
13 is a responsible party, they simply will not be held  
14 accountable for their action.

15 MR. DONOVAN: Of course they will.

16 THE COURT: Because they are also the People of  
17 State of California. The 9th Circuit statute --

18 MR. DONOVAN: No, Your Honor, that is not  
19 correct at all and it has never been the city's position  
20 the People of the State of California are the plaintiffs  
21 on the injunctive claims. The Defendants have  
22 contribution claims against the city. Those contribution  
23 claims are against the city. Whether the city is liable  
24 or not liable on the contribution claims, Your Honor will  
25 determine it is unaffected by the fact the People of the



1 State of California are the plaintiff in the joint and  
2 several injunctive claims against the responsible parties  
3 to secure adequate protection of the public health,  
4 welfare and environment at this site.

5 THE COURT: In the cooperative agreement does  
6 it mention of State of California lead agency or City of  
7 Lodi under the cooperative agreement.

8 MR. DONOVAN: Not entirely.

9 THE COURT: Let me finish. I asked  
10 Mr. Robinson is it the people of the State of California  
11 lead agency or City of Lodi.

12 MR. ROBINSON: My understanding is the  
13 agreement is between the city and DTSC only.

14 THE COURT: If the lead agency is the city, how  
15 do you get around that the People of the State of  
16 California aren't mentioned in the cooperative agreement?

17 MR. DONOVAN: That is not accurate, Your Honor.

18 THE COURT: Where are they mentioned?

19 MR. DONOVAN: The people of the State of  
20 California, one of the operative provisions of the  
21 cooperative agreement that is the excuse of the  
22 enforcement authority by the city specifically mentioned  
23 as shall be brought by the city office claims. The city  
24 commits itself to investigate or pursue all claims  
25 available to the city or claims available to city

1 attorney in his role as prosecutor to prosecute, and that  
2 it was recognized in negotiations with DTSC those claims  
3 included claims available to any city in California.  
4 This is not new.

5 THE COURT: We have been down that road. Your  
6 view is that that language really implies that the  
7 city -- that the People of State of the California is the  
8 lead agency.

9 MR. DONOVAN: The People of State of California  
10 are the plaintiff in the injunctive claims on this  
11 matter. The cooperative agreement are the City of Lodi  
12 and DTSC, it has nothing to do with contracting with  
13 People of the State of California.

14 THE COURT: It says the City of Lodi. It's on  
15 paragraph 9(a), "The City of Lodi alone shall in  
16 coordination, cooperation, and close communication of  
17 BPAC, oversee, monitor, review and approve the work  
18 undertaken by the potentially responsible parties to  
19 assess, ensure compliance with the applicable federal,  
20 state and local law." That seems to be pretty clear.

21 MR. DONOVAN: That is clear under paragraph 9,  
22 Your Honor.

23 THE COURT: Look, I'm not -- it does get to the  
24 issue against the stay and litigation, and it just struck  
25 me if we go ahead with the trial, which I think we are

1 going to do, and the Court were to find the city a  
2 responsible party, then the 9th Circuit, the Court of  
3 Appeals, chooses to research my ruling and says the city  
4 can proceed as the People of the State of California,  
5 that is a bizarre situation. Here the city is a  
6 responsible party, and yet the city on behalf of the  
7 People of State of California can pursue actions against  
8 other defendants.

9 MR. DONOVAN: I'll call this Court's attention  
10 promptly back to the fact that it is not the city  
11 becoming the People of the State of California, it's the  
12 city attorney.

13 THE COURT: The city attorney becomes this  
14 avenging angel on behalf of the People of the State of  
15 California, but I think that is entirely bizarre because  
16 the corporate entity of the city is a responsible party.  
17 How in the world does that make sense? Does it bother  
18 you at all?

19 MR. DONOVAN: Not at all. And I think the fact  
20 of the matter you think the fact the People of State of  
21 California are plaintiffs in joint and several claim in  
22 any way affects claims on behalf of city, it does not.

23 THE COURT: Let me ask the Defendants, does  
24 anybody offer any thoughts?

25 MR. BOWERS: Your Honor, the only thing I would

1 mention is that your question about this notion of the  
2 People of the State of California asserting these claims  
3 and not asserting claims against the city, in the same  
4 regard go to the heart of what we discussed two years ago  
5 in our motion to disqualify this embodiment, this  
6 ethereal procedural fix that is hoisted up there as the  
7 People so you can manufacture an innocent plaintiff to  
8 pursue subjective claims against a subset and basically  
9 shield the city just can't be right if, you pointed out,  
10 the interlocutory appeals work out the way you suggested.

11 THE COURT: The question I have, if we go ahead  
12 with the trial and the city is found responsible, then  
13 that really -- I mean, these are really two separate  
14 issues and so why -- is there any reason to stay that  
15 action? It has nothing to do with the appeal. It sounds  
16 like you pretty well argued the determination of the  
17 People of the State of California -- you pretty well  
18 argued that the People -- the People of the State of  
19 California issue, on appeal it really has nothing to do  
20 with the city being found liable.

21 MS. GUALCO: That is correct, Your Honor.

22 THE COURT: So I don't know why you have made  
23 the argument, and it strikes me I don't have any --

24 MR. DONOVAN: Your Honor, I think you're  
25 absolutely correct, it doesn't have anything to do with

1 the first of the interlocutory appeals.

2 THE COURT: Okay.

3 MR. DONOVAN: Whether the people are the  
4 Plaintiff in the injunctive claim or the proper party to  
5 bring them has nothing to do with contribution liability  
6 against the city, nothing. In this too there is a second  
7 appeal in front of the Court, and, as you know, that  
8 second appeal is the reason because it calls into  
9 question what is now presently scheduled to be conducted  
10 in this trial is a determination for purposes of  
11 determining whether claims can be brought by the city on  
12 a joint and several basis. The city, not the people, but  
13 the city on a joint and several basis. The Court has  
14 determined it needs to resolve by reason of its  
15 application of Fireman's Fund.

16 THE COURT: Slow down.

17 MR. DONOVAN: By reason of its application of  
18 Fireman's Fund decision, the question of whether the city  
19 is or may be a potentially responsible party under  
20 CIRCLA. Remembering, of course, there -- Your Honor,  
21 there are no CIRCLA claims in this case. Rather than the  
22 doctrines articulated in Fireman's Fund the Court used to  
23 import that issue in this case to decide whether the city  
24 can maintain joint and several liability claims so as we  
25 proceed to claims against the city or for that matter or

1 whether those claims are joint or several, that issue is  
2 directly in front of the Court of Appeals right now and I  
3 do not believe the Court can proceed forward in trial on  
4 those issues.

5 THE COURT: If I were to find the city  
6 responsible party, how would that affect the Court's --  
7 you said -- I mean, according to you some other courts  
8 have done this too, but in importing CIRCLA doctrine in a  
9 nuisance claim, and you are saying supposing you were  
10 found to be responsible, it wouldn't matter any way, you  
11 are saying that CIRCLA doctrine can't be applied to your  
12 nuisance claims, so why should that prejudice your  
13 nuisance claims?

14 MR. DONOVAN: I didn't understand, I'm sorry.

15 THE COURT: I guess I didn't understand you.

16 MS. GUALCO: Again, Your Honor --

17 THE COURT: You want to clarify my question?

18 MS. GUALCO: Yeah.

19 THE COURT: Do so.

20 MS. GUALCO: First, I'm going to answer --

21 THE COURT: You understand my question?

22 MS. GUALCO: I --

23 THE COURT: If the city is found to be a  
24 responsible party, Mr. Donovan said you could, you know,  
25 implicate CIRCLA doctrine in a nuisance claim.

1 MS. GUALCO: Your Honor, that is completely  
2 opposite to what the court decided in Fireman's Fund.

3 THE COURT: I'm not going to reargue --

4 MS. GUALCO: We don't agree with him. We  
5 believe if the city is to keep under the doctrine that is  
6 outlined in Fireman's Fund, the city is precluded from  
7 obtaining joint and several relief in any form, including  
8 state nuisance law. We also believe that it's not  
9 correct what Mr. Donovan has represented, that actually  
10 you or the Court did not explicitly -- that you have  
11 ruled or did not rule on the fact of whether or not joint  
12 and several injunctive relief can be sought against other  
13 PRPs. That is not up on appeal right now before the  
14 Court, and that is why the trial should go forward.

15 If we go forward with the trial on the RP  
16 status of the city, I think it will actually make  
17 determination of this case -- that will allow this case  
18 to move forward more smoothly. So we would urge that the  
19 Court hold the trial on September 22nd regarding the  
20 107(b) defenses of the city to make a determination as to  
21 it's RP status, because we would also argue that the city  
22 should have been included in the order issued by DTSC  
23 against the industrial plume party.

24 THE COURT: Let me let Mr. Donovan respond to  
25 what you just said, and maybe I misstated the premise of

1 your argument. I want to make sure I understand. I  
2 think I understand. Why don't you just take it one more  
3 time.

4 MR. DONOVAN: Thank you, Your Honor. I think  
5 what was just presented to you, frankly, is doublespeak,  
6 Your Honor, and it takes you nowhere but back to where we  
7 started. What is at issue now in phase I are injunctive  
8 claims by us against them, the Defendants, and claims and  
9 alleged injunctive claims by them against us, against the  
10 city, that's what is at issue.

11 In getting to this point where you are going to  
12 try this matter, Your Honor has ruled that withdrew an  
13 injunction issue previously in our favor, a joint and  
14 several injunction against the responsible parties, and  
15 said we have to decide on Fireman's Fund whether the city  
16 did bring joint and several liable injunctive claims in  
17 phase I against the responsible parties, and in order to  
18 do that, I need to follow the contours of Fireman's fund  
19 no matter how you define those contours.

20 Your Honor, your very decision, A, that the  
21 Fireman Fund's principle are at all applicable to  
22 California public nuisance law are present in this claim  
23 and affect the liability of the city in any way are all  
24 now before the 9th Circuit. As a matter of jurisdiction,  
25 Your Honor, on that second appeal that you no longer have



1 jurisdiction on those claims, and that jurisdiction is  
2 vested in the 9th Circuit.

3           The point of the matter is no matter how you  
4 look at that issue of claim, what kind of liability does  
5 CIRCLA liability relate to the liability of the city at  
6 all, and if so, how those issues are now in front of the  
7 9th Circuit. And the city brought no joint -- the city  
8 brought no joint and several claims, only the people have  
9 brought the injunctive claims in this matter. That is a  
10 different issue, that is the first appeal. In the second  
11 appeal we now face the substantive law question of does  
12 CIRCLA liability relate to the application of California  
13 public nuisance law at all, and if so, how does it relate  
14 and does it affect the liability of the city at all. And  
15 those matters, Your Honor, are clearly in front of the  
16 9th Circuit right now.

17           MR. MEYER: Your Honor, the reason why I recall  
18 you withdraw the injunction is the city admitted it was a  
19 PRP. The city then, as they have done every time, filed  
20 their fifth appeal in this case. The issue -- the issue  
21 has to do with propriety of that ruling. The question is  
22 what we are going to be doing on September 22nd, which is  
23 to whether the city has any 107(b) defenses, is not at  
24 all implicated in what is before the 9th Circuit. The  
25 9th Circuit may, for example, decide -- I suppose the 9th

1 Circuit might decide what the amount it was really RP  
2 instead of PRP, but Your Honor is going to be resolving  
3 that issue on September 22nd.

4 I think what my co-counsel indicated, this is  
5 just fundamental, this case -- sort of the lynch pin of  
6 this case is whether the city has 107(b) defenses. If  
7 the city has no 107(b) defense, the fact the city has  
8 indicated -- if they do not have 107(b) defenses this  
9 case fundamentally changes. At that point, this case  
10 becomes a contribution action alone, and, Your Honor, I  
11 think this case -- I think everybody is getting tired of  
12 this case. I think this determination --

13 THE COURT: Now, wait a minute, tired of this  
14 case.

15 MR. MEYER: This determination is critical.  
16 Frankly, what is going on here, Your Honor, the city does  
17 not want this determination. They do not want any  
18 reference to any factual record developed with regard to  
19 107(b) defenses when this issue is pending before the 9th  
20 Circuit. That is what is going on. We need to decide  
21 this issue. This is just -- we are just chomping at the  
22 bit. We have done an enormous amount of discovery, we  
23 have got experts lined up. The 9th Circuit is not going  
24 to find, Your Honor, you are interfering with their  
25 jurisdiction.

1 MR. DONOVAN: Your Honor.

2 THE COURT: Counsel.

3 MR. DONOVAN: Busy about the business of  
4 telling this Court what we want. Now he is busy about  
5 the business of telling the city.

6 MR. ROBINSON: I want to correct one thing  
7 Mr. Meyers said, he had went too far attributing  
8 rationale why the order was issued. We didn't issue the  
9 order because we didn't think the city had no 107(b)  
10 defenses. That was not taken into consideration  
11 whatsoever. We were certainly --

12 THE COURT: I was assuming that. I would only  
13 hear that from your mouth, the words from your lips. I  
14 have a question of Mr. Robinson. We would assume when  
15 this happens suppose the city is found to be a  
16 responsible party, what does that -- you feel that you  
17 can proceed against the city?

18 MR. ROBINSON: That's a question I've thought  
19 about, but I have no answer to yet and I don't think my  
20 clients have decided. The cooperative agreement causes  
21 some problems for DTSC to name the city administratively  
22 or civilly.

23 THE COURT: Let's assume --

24 MR. ROBINSON: It's not unusual.

25 THE COURT: Whether the city has breached the

1 cooperative agreement, whether the cooperative agreement  
2 becomes annulity, I'm not not saying that happened, I'm  
3 just saying a lot of things happened in the cooperative  
4 agreement that haven't come to fruition. Maybe it's not  
5 the fault of the city, but nevertheless, the terms of the  
6 cooperative agreement clearly have not been met, we can  
7 all agree on that. Why that has happened is another  
8 issue. But let's assume for the moment that the city  
9 simply legally cannot proceed under CIRCLA as a lead  
10 agency. The city is not doing so, but let's assume for a  
11 moment the city is a responsible party, found to be a  
12 responsible party; is it your view that the cooperative  
13 agreement precludes the state from pursuing under the  
14 covenant not to sue? Is that what you are suggesting?  
15 Or if the agreement is breached is the covenant not to  
16 sue still enforceable? Do you want me to repeat my  
17 question?

18 MR. ROBINSON: I think I understand what the  
19 Court is asking. Whether the breach of certain  
20 provisions of the cooperative agreement would allow or  
21 would mandate DTSC to sue the city.

22 THE COURT: Or issue an administrative order  
23 against the city in the alternative.

24 MR. ROBINSON: Your Honor, there are  
25 circumstances where the state would choose not to name a

1 responsible party in an order or in a civil complaint,  
2 even though the state believes that party has liability.  
3 I mean, the whole purpose of joint and several liability,  
4 which is given both to the United States and the state,  
5 is we don't have to name the entire universe of parties,  
6 we can name a select group of parties, and we make that  
7 determination based on all sorts of factors. One factor  
8 might be because the relationship we have with the party,  
9 but that could affect the relief we might choose to get  
10 as against the other parties if we make that type of  
11 decision, but there is no mandate that the state sue the  
12 city even if it believes the city has some liability.

13 THE COURT: Was it your understanding or maybe  
14 was it your client's understanding that the city would  
15 take action under federal environmental laws against the  
16 Defendants in this case or that they would be -- was  
17 there any -- was that not contemplated there was going to  
18 be a nuisance action, for example?

19 MR. ROBINSON: I don't recall what the terms of  
20 the agreement specified. I don't think it said anything  
21 about it being a federal cause of action.

22 THE COURT: It talks of the lead agency,  
23 doesn't it?

24 MR. ROBINSON: It talks about lead enforcement  
25 agency, it didn't specify what state or federal tools

1 would be utilized by the city in acting pursuant to that  
2 role.

3 MS. GUALCO: Your Honor, I think the regional  
4 board attorney wanted to talk.

5 MS. OKUN: Lori Okun for the regional board. I  
6 just wanted to point out the regional board is not a  
7 party to the cooperative agreement, so the regional board  
8 still retains its ability to name the city in  
9 administrative order whether the cooperative agreement  
10 has been breached. As Mr. Robinson points out, we  
11 haven't made any determination who we would name.  
12 Obviously in the regional board case we haven't gotten to  
13 the point of issuing any orders because the site we are  
14 overseeing as the lead agency, it hasn't become  
15 necessary.

16 THE COURT: So obviously the cooperative  
17 agreement doesn't apply to you. If the city were to be a  
18 responsible party, that would be something you would take  
19 into account whether you would take action against the  
20 city without necessarily committing yourself to do so.

21 Well, look, you know, I -- I would like to have  
22 a, you know, where do we go from here kind of response.  
23 I know that my inclination, Mr. Donovan, is not to stay  
24 the trial. I'm going to issue an order later in the  
25 week. I will consider -- I'm not going to make the

1 decision today, but that is my inclination today. My  
2 inclination is not to stay the state under the board or  
3 the DTSC.

4 And I guess my question is to counsel as we  
5 proceed and with respect to the motion for summary  
6 judgment, I'm going to take this under submission, I'm not  
7 going to make a decision on those, but if we proceed with  
8 the trial, if the RAO continues to be enforced and if the  
9 state were to continue to work with other parties, other  
10 Defendants in this matter to expand in scope of the  
11 entire site, Mr. Donovan indicated there is many many  
12 things out there that are not included in this order. I  
13 don't know, Mr. Donovan, are you referring -- I misspoke,  
14 I guess there are a number of orders issued by the state  
15 in order to really encompass what the city has in mind of  
16 doing, is that what you are referring to?

17 MR. DONOVAN: Not only a number of orders, Your  
18 Honor, but an increase of scope and applicablity in some  
19 of the provisions of the orders.

20 THE COURT: If the state assumed that  
21 responsibility to increase the scope of its order to  
22 encompass the entire problem that we are dealing with,  
23 that's what -- I'm interested in knowing where is this  
24 litigation, once that takes place, if it does take place,  
25 because at this point it's surely taken place at the

1 heart of this first phase.

2 MR. DONOVAN: In the court area, Your Honor.

3 And again, I would like the Court to note in the papers  
4 in front of you you have been told the city coordinated  
5 with DTSC in the issue of these orders, we don't appear  
6 before you opposing them. We have told our cooperative  
7 agreement partners given the procedural posture where we  
8 are adequate protection of public health and environment  
9 seems to support the action at this site, but there is a  
10 lot of ifs, Your Honor. I ask you to focus in your  
11 question to me on the subjectives in your sentence, if,  
12 and if, if, if, all of a sudden the plaintiffs do nothing  
13 in this litigation.

14 My point is we are working with them very  
15 carefully. We have no adversarial or hostile  
16 relationship, we are working with them closely to assure  
17 the sites get to responded to. There are parts of the  
18 site we are addressing that no one else is addressing at  
19 the present time. Moreover, there is extended relief we  
20 want to work on. We have no desire at all to tie up your  
21 time or ours, Your Honor, in handling matters that are  
22 being adequately resolved. Because something is included  
23 in the administrative order, Your Honor, doesn't mean  
24 it's being complied with and the parties are doing it.  
25 An administrative order, the ultimate course of sanction



1 in any capacity rests in this Court. My point, Your  
 2 Honor, as we look forward we'll look to narrow these  
 3 issues. Why litigate? Why discuss these matters that  
 4 are already being taken care of?

5 THE COURT: As an example, suppose there was no  
 6 stay and the order was in effect and they say, we give  
 7 up, you say we are going to give up, we are going to do  
 8 whatever the state says, are you going to seek less  
 9 against Guild?

10 MR. DONOVAN: Assuming they would reduce that  
 11 agreement.

12 THE COURT: If there is an order already in  
 13 effect, the state is dealing with it.

14 MR. DONOVAN: They would have to --

15 THE COURT: Let me finish. There is no order  
 16 of any kind. They are -- they submit to the authority of  
 17 the DTSC and say we are going to do what DTSC tells us to  
 18 do. DTSC says, fine, this is remediating that particular  
 19 portion of the site. Would the City of Lodi seek  
 20 injunctive relief against Guild?

21 MR. DONOVAN: My answer to you -- may I ask the  
 22 Court if by this you mean DTSC has issued an  
 23 administrative order to Guild?

24 THE COURT: Just as they have done.

25 MR. DONOVAN: And Guild has in writing

1 acknowledged they are binding and committed themselves to  
2 comply with that order?

3 THE COURT: I don't know what they have done.  
4 They are complying with the order. They are complying  
5 with the order. Maybe the state requires a written -- I  
6 don't know what is involved. DTSC does this every day,  
7 they issue an RAO and the party complies or doesn't.

8 MR. ROBINSON: Basically determine if the  
9 parties are meeting the terms of the order. There are  
10 certain deliverables that are required, and as long as  
11 the parties are complying, there is no need to proceed  
12 further by way of going to court.

13 THE COURT: Why do we need to have an action?  
14 I'm just picking out Guild because Ms. Gualco is standing  
15 in front of me, I'm not trying to pick out any one  
16 defendant. I'm saying if the RAO proceeds as  
17 Mr. Robinson says, why would the city want to spend money  
18 -- wait -- money to get an injunction against Guild under  
19 the circumstances?

20 MR. DONOVAN: I think you assumed the answer,  
21 your Honor. The answer is, no, of course we wouldn't,  
22 provided it was being performed and they had committed  
23 themselves with compliance in that, including everything  
24 the State of California wanted, of course we wouldn't.

25 MR. MEYER: Wait a minute. Wait a minute.

1 THE COURT: No, no, no, you are not even in  
2 this ballgame, you are in the sidelines. The state has  
3 now issued a RAO, Guild is obeying that RAO, you folks  
4 are not even in this lawsuit. You might be if the 9th  
5 Circuit rules on my order.

6 They are saying if they are in compliance why  
7 would you take up my time and your time and the city's  
8 money to fight an injunction and motion for injunction, a  
9 motion against Guild that is. My question is as simple  
10 as that.

11 MR. DONOVAN: Let me try more directly, Your  
12 Honor. If they were providing everything that we the  
13 People of the State of California, the City of Lodi --

14 THE COURT: No, Counsel, you are not answering  
15 my question. You are saying -- maybe you are saying --  
16 you are saying that doesn't matter, it's what you want,  
17 not what the state wants.

18 MR. DONOVAN: Right, yes, of course.

19 THE COURT: So you are going to have --  
20 Counsel, stop and think about this. I know you -- there  
21 may be things you know more about than the DTSC does.  
22 You are telling me the DTSC RAO just isn't good enough  
23 for you and the City of Lodi, you are going to spend more  
24 money, more time to seek more relief of some type above  
25 and beyond what the state is asking Guild to do. Now,

1     that seems to me to be a waste of time.

2             MR. DONOVAN: Your Honor --

3             THE COURT: And a waste of the city's money.

4             MR. DONOVAN: Your Honor's questions took up to  
5 three levels of hypothetical, your question to me, and  
6 you are shaking your head before I respond. Your Honr, I  
7 don't know how to respond to you then.

8             THE COURT: Look, this is simple, RAO raise  
9 your hand. Mr. Robinson, Ms. Gualco raise your hand.

10            MR. BOWERS: Your Honor, but they have a stay.

11            THE COURT: I know that.

12            MR. BOWERS: Which applies --

13            THE COURT: Okay, okay. The point is they are  
14 doing their job under the RAO. Why does the city want to  
15 come in to get injunctions to force me, that is my  
16 question.

17            MR. DONOVAN: Your Honor, if they are doing  
18 everything the city really thinks is necessary to  
19 adequately protect the public health and the  
20 environment --

21            THE COURT: You are putting in an overlap. You  
22 are saying it's not just what the state wants to do for  
23 complete remediation of the city, it's what the city  
24 wants.

25            MR. DONOVAN: The city is the purveyor of

1 public drinking water at the site, and adequate  
2 protection of that public drinking water supply --

3 THE COURT: Why don't you deal with the stay.

4 MR. DONOVAN: Of course --

5 THE COURT: Just tell the -- why don't you tell  
6 the state you want this or this? Why come to me? You  
7 say you are friends, the state listens to me. Why don't  
8 you just -- please, listen to me. Why don't you go to  
9 the state, your friends you are closely aligned with, and  
10 say, look, State, I would like you to do this because we  
11 think we need this for our drinking water supply, and let  
12 them do it? Why come in to see me on a separate action  
13 and file a motion for injunctive relief when the state,  
14 already your friend, is enforcing its own order? Why  
15 don't you work with the state? Why come and see me about  
16 it? Do you understand what my question means? Do you  
17 understand it?

18 MR. DONOVAN: I do understand, Your Honor. And  
19 let me respond again. We have not done that. We are in  
20 direct contact with DTSC, we were happy and dialoging  
21 with DTSC about the scope of the order. You asked me a  
22 hypothetical and you say what if they did this, would we  
23 ever litigate, and I was saying the only thing the city  
24 would litigate for, Your Honor, is anything it didn't get  
25 that isn't being done that it think needs to be done.

1 And if that exists, and I don't know that it does, Your  
2 Honor, if it did, we would bring the claim before you and  
3 say this we think this needs to be done to protect the  
4 issue, the city.

5 THE COURT: But absent that, you wouldn't do  
6 it?

7 MR. DONOVAN: What?

8 THE COURT: There no need to bring motions or  
9 further litigation.

10 MR. DONOVAN: Absolutely not.

11 THE COURT: Where do we find that out, whether  
12 the orders are being complied with?

13 MR. DONOVAN: We are actively involved in that  
14 process.

15 THE COURT: Then there is no reason then to  
16 pursue litigation against those Defendants, it would seem  
17 to me at this point. Why pursue litigation? It's really  
18 a matter of saying whether these orders are sufficient  
19 for the city's purpose. If the parties are complying, it  
20 seems that problem is not on the table.

21 MR. DONOVAN: In the very contents of the order  
22 itself, and leave Guild out of this because they have  
23 just reported a stay with DTSC, but in the very order  
24 itself the parties were obligated not later than fifteen  
25 days after effective day of the order to provide

1 notifications and certifications to DTSC, this has not  
2 been done. They are not in compliance with the order.

3 THE COURT: That is up to DTSC.

4 MR. DONOVAN: You just asked are we actively in  
5 dialog --

6 MR. BOWERS: That is not true, Your Honor.  
7 Oddfellows is in full compliance with that order. The  
8 one item we haven't undertaken is the site remediation  
9 meeting, which was called off by DTSC.

10 MS. GUALCO: That is true.

11 THE COURT: Look it, the whole idea of the RAOs  
12 are being enforced, I'm just wondering what I've got left  
13 to do in phase I.

14 MR. DONOVAN: Until we look at the very issues,  
15 I cannot give you an accurate representation.

16 THE COURT: I appreciate that and I know these  
17 are all hypotheticals, I was just trying to develop the  
18 notion that if the RAOs are what the city wants, what the  
19 state wants, the parties are in compliance, then what do  
20 you need me for?

21 MR. DONOVAN: We would move to phase II of the  
22 litigation and be delighted to do it.

23 MS. GUALCO: We have to try the 107(b)  
24 defenses.

25 THE COURT: We are not there yet. I want to

1 know with respect to the defendants what is really left  
2 here in this case that I need to resolve and needs to be  
3 decided by me, aside from 107(b)

4 MR. BOWERS: In phase I, Your Honor, there  
5 would still be --

6 THE COURT: Other defendants.

7 MR. BOWERS: -- other defendants that would be  
8 out there. And, again, just to reiterate on the record,  
9 Oddfellows' position in its motion articulated three  
10 points, one of them was this mootness doctrine, the other  
11 is primary jurisdiction.

12 THE COURT: Right.

13 MR. BOWERS: It's not a situation where the  
14 city is asking what they want. The primary jurisdiction  
15 doctrin looks to should the Court be -- the city is  
16 asking the Court to do that when DTSC is standing here,  
17 so Oddfellow's motion is very narrow. And as to the  
18 subset of claims, we don't think that the trial is  
19 necessary.

20 THE COURT: The trial of what?

21 MR. BOWERS: The trial of the city's injunctive  
22 relief claims against Oddfellows based on DTSC's issuance  
23 on that order.

24 THE COURT: What I really need, it would be  
25 helpful to me, Mr. Robinson, if I knew there was any



1 plan. You said there was some agreements already in  
2 place between the order and DTSC. I know there is other  
3 sides involved here, you may not be in a position -- I'm  
4 sure you are not today, and maybe the board and DTSC are  
5 not in a position to tell me even in the near future what  
6 plans they would have, but let's assume for the moment  
7 this is where the state is headed, they are going to  
8 assume the lead role, a different role than they have in  
9 the past, issue RAOs with a view to between the two  
10 agencies cleaning the site. If that's going to happen  
11 that does impact this Court dramatically, that is my --  
12 no matter what anyone else has said in this Courtroom, I  
13 think it makes a big difference in what I'm going to do.  
14 You are the experts, you are the folks that can do this  
15 more cost effectively, more efficiently without Court  
16 oversight. I'm not suggesting it would be as Mr. Donovan  
17 said, maybe it's not being done, I'm not going to lose  
18 jurisdiction over the parties, but the State is going to  
19 proceed, perhaps, with a plan to remediate the entire  
20 site, is that something you can provide me in any way,  
21 shape or form in the next 60 days?

22 MR. ROBINSON: I think what I can give you -- I  
23 was corrected on one small point, the MOU is only as to  
24 the central area plume. As to the other four areas, the  
25 agencies have informally divided responsibility so that

1 the regional board has two of those areas, DTSC has the  
2 other two. I can certainly give the Court a report  
3 setting forth what that MOU details and how the agencies  
4 have divided responsibility and what their intention is.

5 THE COURT: Their intentions are very  
6 important. That will have a lot to do with what this  
7 Court does in terms of staying much of this case.

8 MR. ROBINSON: And I certainly can't disagree  
9 whatever we do impacts your decision, whether and how to  
10 issue an injunctive relief, if it's even necessary.

11 THE COURT: I think we all agree on that.

12 MS. GUALCO: Your Honor, could we speak to what  
13 we think needs to be tried in the phase I case?

14 THE COURT: I wouldn't want to miss that.

15 MS. GUALCO: Thank you.

16 THE COURT: Clue me in.

17 MS. GUALCO: The 107(b) defenses of the city  
18 needs to be tried. And also, Your Honor, we have made a  
19 couple of motions for summary judgment to be heard on July  
20 25th, one of which has to do with the joint cooperative  
21 agreement and whether it should be nullified in its  
22 entirety because of a lack of due process. That was  
23 followed or narrowed to only include the ownership,  
24 operation and maintenance of the sewer system as to the  
25 contribution bar that is claimed by the city. I think

1 those issues need to be determined on a motion for  
2 summary judgment. If there is a triable issue of fact,  
3 they need to be determined at the phase I trial at this  
4 matter because the contribution bar of the city, I think,  
5 goes along with their claim that they have 107(b)  
6 defenses, which would not preclude them from seeking  
7 joint and several relief against the Department in this  
8 action. And we also also have a RCRA claim that we have  
9 also made a motion for summary judgment on, that is to be  
10 heard on July 25th and the same would go for that.

11 THE COURT: One more thing I would mention to  
12 Mr. Robinson, this is something to be thinking about,  
13 what happens -- I don't want to get into the people  
14 versus the city conundrum, but if the city were a  
15 responsible party, what happens then if that was the  
16 Court's finding? I'm not suggesting you have an answer  
17 for me today, but thinking about it and obviously the  
18 city wants -- has something to say about that. I'm not  
19 entirely sure what your response is to that, if the city  
20 is a responsible party, what does the city do with that  
21 status if it's not something that can be shared in equal  
22 status with the other responsible parties here.

23 MR. DONOVAN: I think it certainly can.

24 THE COURT: What's the State's response to  
25 that?

1 MR. ROBINSON: I certainly think as to the  
2 regional party, which is not a party to the agreement,  
3 they certainly retain the authority to bring an  
4 administrative or civil action against the city.

5 THE COURT: That may be the action then.

6 MR. ROBINSON: As to DTSC.

7 THE COURT: I understand. With respect to that  
8 issue, by the way --

9 MR. DONOVAN: Your Honor, I beg your pardon,  
10 but you asked the question, I would like one chance to  
11 respond to it. I think it can help the Court if I can  
12 say it correctly. I'm getting frustrated with my own  
13 ability to say it correctly. The city's status as a  
14 responsible party, if it is or if it isn't, if its  
15 liable, not liable, has contribution, doesn't, whatever  
16 this Court determines the city's status is as a  
17 responsible party it will share liability on all other  
18 responsible parties as appropriate among all responsible  
19 parties using all equitable criteria. The only question  
20 that differs, Your Honor, is is the city plaintiff on the  
21 injunction claims. Our position is, as you know, people  
22 are plaintiff on the injunction claims. That ability  
23 once put out there joint and several liability on  
24 responsibility liability, if it generates contribution  
25 liability for the city it's like any other entity, it has

1 contribution as you deem appropriate. It has liability  
2 if you find it liable as any other defendant, and that  
3 has never changed, they are unconnected in any way.

4 MR. MEYER: Your Honor, that's just -- that is  
5 completely disengenous. As pointed out earlier, if the  
6 city -- if they are found to be the people, they are  
7 never going to sue the city. The city always makes this  
8 point, you can contribution relief while we seek  
9 injuctive relieve joint and several, by the way, we have  
10 contribution bar, which is one of the things they want to  
11 litigate. They didn't want to bar -- they still take the  
12 position contribution claims are going to be barred  
13 against the city.

14 MR. DONOVAN: Your Honor, the city does have a  
15 contribution bar, whether Your Honor holds it or strikes  
16 it down is a matter, you know, has come before you  
17 before. We do have one, they don't. The reason they  
18 don't have a contribution provision is they haven't  
19 settled with the state, the city does. The point is very  
20 similar, the validity of that contribution provision or  
21 would be determined by the Court and the share of  
22 liability in term of that contribution act would be  
23 determined by this Court.

24 MR. MEYER: That is why it's disingenuous, they  
25 always say we will share liability, but I just heard them

1 indicate they are got going to share liability.

2 THE COURT: I think I have heard enough of  
3 that. Look, I'm trying to fashion on order here that  
4 makes sense and you understand what the concerns are and  
5 that is the effect of the RAO. I'll give you an  
6 indication what you think with respect to stay of  
7 litigation itself. I do think with respect to the RAO,  
8 that stays the hand of several parties in this case and  
9 at least I think from the standpoint of judicial economy  
10 and resources, whether this expense of the parties are  
11 beginning to occur, I think they should take that into  
12 account. I think this is an opportunity here to see how  
13 this RAO develops. Could I hear from you Mr. Robinson  
14 and also both agencies? Were did counsel --

15 MR. ROBINSON: I think Ms. Okun had to leave.

16 THE COURT: What would be a reasonable time  
17 period, because we have a trial date of 22nd of  
18 September. We have other motions on the 25th, is there a  
19 chance we might get some information back on the scope  
20 and nature of the MOU and such by the 25th? Is that  
21 possible?

22 MR. ROBINSON: I think the MOU as to the  
23 central area plume is already reduced to writing, and  
24 that sets forth --

25 THE COURT: The intention is what I'm more

1 interested in, if we are headed in that direction, and  
2 that means a lot, obviously, to the Court.

3 MR. ROBBINSON: I think 60 days is doable.

4 THE COURT: 60 days.

5 MR. ROBINSON: 60.

6 THE COURT: 6, 0?

7 MR. ROBINSON: 6, 0.

8 THE COURT: With that, I don't know where we  
9 are going to be on the 25th, but that's obviously of  
10 importance to me. The motion is on the 25th, don't  
11 worry about that 25th of July. What about if the -- I  
12 would like to have the parties thoughts, do you know  
13 anything further than you have already done with respect  
14 to these various motions I've heard today? I've heard  
15 two motions, the RAO and stay of litigation, is there  
16 anything more you want to add in light of what I have  
17 said? Also heard the motion of stay by the Oddfellows.  
18 Is that sufficient?

19 MR. BOWERS: Your Honor, I have 60 seconds, I  
20 would like to respond to Oddfellows' motion.

21 THE COURT: You can, you'll have an  
22 opportunity. Let me just ask Mr. Donovan something.

23 MR. HIXSON: Fireman's Fund was recounted in  
24 this case with the limited purpose of the city motion.  
25 In the city's brief the city disclaimed any intent to

1 stay the Fireman's fund or unguard action, so at this  
2 point, it appears that no one is seeking a stay of this  
3 case and they ask that they proceed accordingly.

4 MR. DONOVAN: That is correct we do not want a  
5 stay of that case, Your Honor. There is two issues I  
6 think I need to highlight to this Court in response to  
7 Oddfellows' motion, and, Your Honor, I only do it,  
8 because I can imagine what the response I'll draw from  
9 you by saying this extremely unique posture of this case,  
10 but in this context, Your Honor, I say this case is  
11 before the Court entirely on supplemental jurisdiction.  
12 There is no federal question jurisdiction claims in this  
13 case, there are no diverse claims in this case, no  
14 federal interest claims in this case. The case is  
15 retained in this Court under supplemental jurisdiction,  
16 and it's only state law claims pending before this Court.  
17 In that unique posture, Your Honor, I cannot imagine  
18 anything more, I'm talking about the plaintiff's  
19 complaint, the plaintiff's claims against which  
20 Oddfellows is moving, Your Honor, that jurisdiction  
21 invoked by the Plaintiffs of this Court, is entirely  
22 supplemental jurisdiction. Against that Oddfellows has  
23 raised, you know, Berford (phonetic.) abstention, and I  
24 only have this to say, and I'll be entirely quite, and  
25 that is incredibly unfounded. Berford is the one



1 abstention doctrine based on prevention of early federal  
2 interest into state matters, and in this case there are  
3 no more federal interest. I mean, this is not like  
4 Berford is designed to tell the federal courts to abstain  
5 on applying -- asserting federal interest or federal  
6 concerns whatever regulatory of state law. In this case,  
7 Your Honor, it is state law applying entirely state law,  
8 settled state law, in this case. There are no federal  
9 interests.

10 MR. BOWERS: The fact there are no state  
11 interest in plaintiffs complaints is all the more  
12 compelling reason for this Court to abstain for counsel  
13 to indicate that there are no federal interests. Counsel  
14 knows full well that every order that comes out of this  
15 court has the full force and effect of federal law. Even  
16 if Berford doesn't apply in -- under these facts and the  
17 Court determines that the doctrine of primary  
18 jurisdiction is absolutely on point in a situation we  
19 have got a federal court sitting there ultimately being  
20 asked by Plaintiffs to second guess what Mr. Robinson and  
21 the agencies are going to do. And then the third point  
22 of mootness has already been addressed quite extensively  
23 here, if this Defendant did everything the Plaintiff's  
24 wanted done, there is no need to continue.

25 THE COURT: All right, counsel. Anything

1 further?

2 MR. DONOVAN: No, Your Honor.

3 MS. GUALCO: The only other thing, Your Honor,  
4 I was wondering if on July 25th we could have a short  
5 status conference regarding the upcoming trial, and just  
6 some logistical things like that if we can get those  
7 determined.

8 THE COURT: I will incorporate that in my  
9 order. I've taken it under submission. I've told you my  
10 inclination. I haven't ruled yet. If I rule that the  
11 trial is going forward, I will certainly hear from the  
12 parties.

13 MR. ROBINSON: I spoke to my co-counsel, I  
14 think we can get that statement to you probably 30 days.

15 THE COURT: The sooner the better will be  
16 great. If you do that, I want an opportunity for the  
17 parties to comment upon it. 30 days, what does that take  
18 us to? 30 days outs?

19 THE CLERK: The 11th of August. That would be  
20 Monday, the 11th of August.

21 THE COURT: And then could the parties offer  
22 any comments if they wish, not to exceed 15 pages, ten  
23 days thereafter on August 21st. Do that simultaneously.

24 MR. GUALCO: Your Honor. I assume when you are  
25 asking Mr. Robinson for statements from agencies, you are

1 referring to both DTSD and the board?

2 MR. ROBINSON: Both agencies.

3 MR. LYCETT: Your Honor, may I address the  
4 Court?

5 THE COURT: You may.

6 MR. LYCETT: Jon Lycett, I represent a third  
7 party in this matter, Luster-Cal Nameplate Corporation.  
8 Since the statements that you are requesting from the  
9 state agency will necessarily address their intent with  
10 respect to the entire city, I would just request that the  
11 third parties be allowed to submit a statement responding  
12 to it as well.

13 THE COURT: Why not. Sure, I'd like to hear  
14 from everybody. Don't we have a service list? We have  
15 liaison counsel.

16 MS. GUALCO: We have liaison counsel.

17 THE COURT: Liaison counsel will take care of  
18 it. Anything else?

19 MS. GUALCO: Thank you, Your Honor.

20 MR. DONOVAN: Thank you.

21 (End of requested proceedings.)

22

23

24

25

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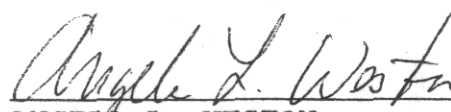
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STATE OF CALIFORNIA     )  
                                  )   ss.  
COUNTY OF SACRAMENTO   )

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COURT: United States District Court  
JUDGE: The Honorable Frank C. Damrell, Jr.  
CAUSE: Lodi vs. M&P Investment  
DATE: Friday, July 11, 2003

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## REPORT SAYS COUNCIL WAS KEPT IN DARK ABOUT BONDS

By: Dave Howland

Published: December 22, 1994 in News

The report says no city employees will be punished because of the turbine project bond problems but proposes they learn from mistakes.

Top Redding officials knew for five months that insurance was missing on a \$38 million turbine power project but withheld the information from the City Council to avoid jeopardizing the venture, according to a report released Wednesday by Interim City Manager Sam McMurry.

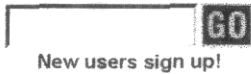
McMurry said he, City Attorney Randy Hays and former City Manager Robert Christofferson knew in December 1993 that Santa Rosa developer MLP Energy had not acquired performance and payment bonds for the turbine power project on Clear Creek Road.

Together with Electric Department Director Sam Lindley, they opted not to tell the City Council because the law would obligate them to inform the council in public - a move that McMurry said would have effectively halted the project.

"It probably would have resulted in the contractor and the subcontractor stopping work and we would have had parts of the turbines in three or four different locations and may have had real difficulty getting the project done," McMurry said Wednesday night.

The fact the bonds were missing was made public in April when contractor Zurn/NEPCO of Redmond, Wash., walked off the job, claiming MLP owed it money. A legal battle ensued between the city, MLP and Zurn/NEPCO, resulting in settlements that could place the project as much as \$1.3 million over the city's budget.

McMurry's 18-page report contradicts a statement by



Christofferson, who told the Record Searchlight in May that he had learned about the missing bonds "two or three weeks ago."

Christofferson, who now runs a consulting firm in Meadow Vista, said Wednesday night that he knew for months the performance bonds were missing but thought the information was not important enough to inform the council. He said his office was handling more pressing issues at the time.

"There never was a conscious decision to conceal it from the council," he said. "That would have been quite contrary to our basic posture of keeping the council informed. Rather, it was a matter of trying to work it through so the matter would be solved."

McMurry said in his report, addressed to Mayor Bob Anderson and the City Council, that the Electric Department's Resources and Operations divisions were responsible for seeing that MLP acquired the bonds before construction began.

"It is apparent that Resources believed the performance bond would be obtained after the project was transferred to the Operations Division, while the latter believed it had been obtained under the earlier phase of the project," McMurry wrote.

McMurry added that he has absolved all city employees of wrongdoing.

"There may be disappointment in some quarters that I have not taken disciplinary action against an employee or employees as a result of the failure in the accountability system involving the performance bond," McMurry wrote.

"I have not taken such action because the project is a success by any measure, and I see no justice or equity whatsoever in punishing employees who have served the city honorably and well, and have been integral parts of a project that will save ratepayers tens of millions of dollars."

McMurry said he has ordered new procedures to ensure bonds are acquired for all city projects. They require the city clerk's office and Finance Department to double-check paperwork.

Anderson said Wednesday the council would discuss McMurry's report and decide if it wants more information.

"I think it's time that we finish it up one way or another, put this behind us and go on with running the city," the mayor said.

~~Christofferson retired July 2. Hays submitted his resignation Nov. 29 and McMurry announced his retirement Dec. 15.~~

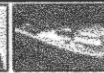
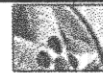
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## CITY OFFICIAL IN JEOPARDY OF LOSING JOB

By: Dave Howland

Published: October 20, 1994 in News

The Redding City Council has questioned its attorney's handling of several issues, including a turbine power project and a downtown toxic mess.

The Redding City Council is preparing to discipline or dismiss a top city official and has hired a law firm to help with the task.

Council members refused Wednesday to name who they plan to rebuke or oust, but the move comes amid questions about City Attorney Randy Hays' handling of several issues, including the city's turbine power project and the purchase of contaminated land for Redding Area Bus Authority's future downtown station.

City officials say problems with both projects could cost Redding more than \$2 million. Hays was unavailable for comment Wednesday.

Councilman David Kehoe confirmed Wednesday the council could be seeking to discipline or dismiss only two people - the city attorney or interim city manager.

"It would be a reasonable conclusion that we are looking at those two positions," Kehoe said.

The council has leveled little criticism at Interim City Manager Sam McMurry, who was temporarily promoted from assistant city manager in May while the council looks for a city manager to replace Bob Christofferson. McMurry said Wednesday he has "no idea" what the council is plotting.

"I don't know and I couldn't speculate on that," he said.

Kehoe also confirmed the city hired the Redding law firm of



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Bandell and Swanson to advise the council on disciplining or dismissing the official.

The council held a closed session before its regular meeting Tuesday to discuss "public employee discipline, dismissal or release" and then voted to hire the firm.

McMurry added that he was asked to leave the council's closed session - a request he said would not be unusual if the council discussed either his or Hays' dismissal.

Mayor Bob Anderson said city code allows the council to fire or discipline only the city attorney or city manager. The city manager is ultimately responsible for hiring and firing all other city employees, he said.

Another unanswered question Wednesday was how much the city would pay the law firm. Anderson said no contract will be released detailing the purpose of hiring the firm or estimating the total cost to taxpayers.

Instead, he said a "letter of engagement" will be made public outlining the firm's hourly fees. Anderson said attorney L. Alan Swanson will handle the case.

Neither Swanson nor partner Leonard Bandell returned phone calls Wednesday. A bookkeeper at the firm said she could not release a list of the attorney's hourly fees.

Terry Francke, head of the California First Amendment Coalition, said state law requires public agencies to disclose their reasons for hiring a contractor along with the amount of money it plans to pay them.

Several past and present city employees said Wednesday they would not be surprised if the council decided to remove Hays.

Hays was a finalist for a city attorney's position in Roseville earlier this year but was rejected in July.

Most recently, council members questioned Hays' judgment for approving a contract to buy contaminated land from Southern Pacific Transportation Co. without holding the railroad responsible for the pollution.

RABA officials say the unexpected cleanup could cost the city more than \$1 million. Hays said last month the city could recover much of the money because it had no way of knowing the extent of the pollution.

Earlier this year the council bypassed Hays and hired another attorney to fend off more than \$20 million in claims resulting from the city's failure to acquire payment and performance bonds for its \$38 million turbine power project on Clear Creek Road.

City officials estimate that error could eventually cost the utility up to \$1.3 million. Hays said he wasn't responsible for making



sure the bonds were in place.

In 1990, Hays accepted blame for failing to carry out City  
Council orders to lock up the purchase of the 3,000-acre Hunt  
Ranch.

The city planned to use the land to open a firing range, but it  
was purchased by someone else because Hayes did not open  
escrow. The city had spent \$60,000 for environmental studies on  
the property.

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## STATE PROBES CITY OVER POWER PLANT

By: Dave Howland

Published: August 27, 1994 in News

The state's probe could result in fines of up to \$15,000 for the project developer and lesser penalties for the city official who approved the contract.

The state attorney general's office this week began investigating whether the city of Redding hired a developer knowing the company may not have had a state-required contractor's license.

An assistant attorney general and an investigator with the Contractor's State Licensing Board have begun talking to city officials and collecting documents about allegations that developer MLP Energy of Santa Rosa began a \$38 million power project in 1992 without a contractor's license.

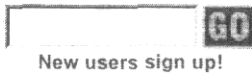
"For us it's a pretty big deal and it's out of the ordinary," said Larry Brandon, a supervisor with the licensing board. "You don't see many unlicensed contractors getting into contracts to build \$30 million power plants."

The city took MLP off the turbine power project in June after the developer reportedly stopped paying contractor Zurn/NEPCO of Redmond, Wash., to build the project. After walking off the job April 22, Zurn/NEPCO returned to work last week under a new contract with the city.

Brandon said MLP has no contractor's license on file with his office. He said the investigation will focus in part on whether another contractor loaned MLP its license number before the contract was signed.

Redding Mayor Bob Anderson said Friday he welcomed the state's investigation and added it might serve as a substitute to an internal probe planned by the city.

"They might just do our job for us," he said. "We want the



answers that they're looking for. We want to know what went wrong and why it went wrong."

The investigation was sparked by a complaint from Steve Johnson, West Coast supervisor for Energy Services Inc. of Farmington, Conn., on June 2.

Johnson, whose company lost a bid for the turbine project, alleged Electric Department officials knew that MLP had no contractor's license before they chose the company.

Anderson said Redding attorney Dugan Barr, hired by the city to handle its dispute with MLP, has disputed earlier assertions from City Attorney Randy Hays that MLP did not need a contractor's license to develop the project.

Anderson said he does not know the scope of the state investigation but said Assistant Attorney General Pat Kennedy contacted Barr's office this week to discuss the probe.

Brandon said his office will hand over its report to the attorney general's office next week. Officials there will decide whether MLP should face civil fines of up to \$15,000 or possibly criminal charges, if found to have worked without a contractor's license.

The city could face a lesser civil fine if city officials were aware MLP had no license before the contract was signed, Brandon said.

He said the individual responsible for approving the contract - possibly a former mayor, an electric department official or the city attorney - would be fined.

On Thursday, contractor's license board investigator Kathy Coberly interviewed Electric Department operations Manager Frank Ryan and former Electric Utility Commission member Bruce Swanston, Anderson said.

Brandon said the city was "less than cooperative" Thursday when it charged Coberly \$75 for a copy of the turbine power project contract - the same it would charge the public at 25 cents per page.

Anderson said Assistant City Attorney Doug Calkins instructed Clerk Connie Strohmayer to tell Coberly she could pay for the document or come back with a subpoena to acquire it for free.

"It's just an inconvenience when the city is not fully cooperating," Brandon said. "It'll make me make sure we dot all our I's and cross all our T's before we file any reports."

Brandon added that investigators are checking with the federal Public Utilities Commission to see if MLP had federal authorization that would have freed them from state licensing requirements.

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## LICENSING SNAFU MAY LIMIT SUIT ON PROJECT

By: Dave Howland

Published: June 04, 1994 in News

As troubles mount for Redding's power turbine project, the City Council will try to first complete the work, then find out what went wrong.

Failing to check the credentials of a developer may have undermined the city of Redding's ability to enforce a \$38 million contract for a power turbine project, a state licensing official said Friday.

Tom Reemts, a deputy with the Contractors' State Licensing Board office in Redding, said Santa Rosa developer MLP Energy failed to obtain a state contractor's license before starting work in 1992 on the Clear Creek Road project.

Reemts said the regulatory agency has no proof MLP was qualified to build the project. As a result, MLP and the city likely have lost their right to force each other to adhere to the contract.

"The city would have no legal standing in court if they decided to sue," he said. "They've got themselves in a bad spot and now the city has to decide how they are going to get out of it."

But City Attorney Randy Hays disagreed with Reemts' assessment. The city has not lost its ability to ensure the project is completed, Hays said.

The turbine generators are supposed to begin providing power by the summer of 1995.

Hays said MLP Energy is not required to have a contractor's license because it delegated construction to Zurn/NEPCO of Redmond, Wash., which does have a state contractor's license.

"Just because someone has a contractual relationship with the city doesn't mean they need a contractor's license," Hays said. "That's another red herring in this whole thing as far as I'm concerned."

The contractors board is investigating a complaint about MLP's lack of a license from Stephen Johnson, an employee of Connecticut contractor Energy Systems Inc., which lost out to MLP in a bid for the turbine project in 1991.

Reemts said that depending on the outcome of the probe, the state could fine MLP and order it to stop work. Officials from MLP and Zurn/NEPCO have refused to comment on the project.

Johnson also complained that MLP has never acquired a mandatory city business license - a condition Hays said has no bearing on the contract.

Redding Business License Coordinator Viki Twyman asked MLP in a May 31 letter to purchase a \$90 permit. She said she will send two more letters before referring the problem to the Redding Police Department, which could issue a citation.

City officials have been struggling to find a company to complete the turbine project since subcontractor Zurn/NEPCO walked off the job April 22, claiming MLP owed it money.

MLP has since claimed the city owes it between \$16 million and \$17 million to complete the project, according to Dugan Barr, a Redding attorney hired by the city to handle the turbine dispute.

The city has refused to pay the money and is negotiating with Zurn/NEPCO to return to complete the work.

Compounding these problems, city officials reported in April that MLP had failed to acquire performance and payment bonds - insurance policies used to prevent a work stoppage and pay any claims from a contractor.

In a worst-case scenario, if a contractor sued the city for labor or material costs and won, the city would have to pay out of its own pocket, Hays said.

Redding could be forced to pay no more than the budgeted cost of completing the project - about \$6 million, he said.

But city officials say they are optimistic that the project will be completed on time and within its budget.

Electric Department officials say the turbine project is 95 percent complete, even though the city has paid for only 85 percent of the work, according to Hays.

Power Plant Manager Phil Heckenberg said the remaining work includes installing wiring and placing insulation and aluminum over the turbines to control air pollution.

Mayor Bob Anderson said the City Council will concentrate first on finding someone to complete the project and then investigate what mistakes city staff may have made.

City Manager Bob Christofferson will update the council Tuesday on efforts to complete the project. He proposes three options in a staff report: Hiring Zurn/NEPCO, seeking an outside contractor to complete the project or using city staff to manage subcontractors.